

UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.
(IN THREE VOLUMES.)

FORBES P. HASKELL, as Receiver of SCANDINAVIAN-AMERICAN BUILDING COMPANY, a Corporation, et al.,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees.

TACOMA MILLWORK SUPPLY COMPANY, a Partnership Consisting of ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of R. T. DAVIS, Deceased, R. T. DAVIS, Jr., LLOYD DAVIS, HARRY L. DAVIS, GEORGE L. DAVIS, MAUDE A. DAVIS, MARIE A. DAVIS, RUTH G. DAVIS, HATTIE DAVIS TENNANT and ANN DAVIS,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees.

McCLINTIC-MARSHALL COMPANY, a Corporation, and E. E. DAVIS & COMPANY, a Corporation, and FAR WEST CLAY COMPANY, a Corporation,

Appellants,

vs.

ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of R. T. DAVIS, Deceased, et al.,

Appellees.

WASHINGTON BRICK, LIME & SEWER PIPE COMPANY, a Corporation,

Appellant,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees,

BEN OLSON COMPANY, a Corporation,

Appellant,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees,

J. P. DUKE, as Supervisor of Banks of the State of Washington, and as Successor in Office of the Defendant CLAUDE P. HAY, as State Bank Commissioner of the State of Washington, FORBES P. HASKELL, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and SCANDINAVIAN-AMERICAN BANK OF TACOMA, a Corporation,

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VOLUME I.

(Pages 1 to 416, Inclusive.)

Upon Appeals from the United States District Court for the Western District of Washington, Southern Division.

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Attorneys for John P. Duke, as Supervisor of Banks of the State of Washington, etc., Appellant No. 6. [2]

Bill of Complaint (Original).

To the Honorable E. E. CUSHMAN, Judge of the District Court of the United States, for the Western District of Washington:

*Page-number appearing at foot of page of original certified Transcript of Record.

McClintic-Marshall Company, a corporation organized and existing under the laws of the State of Pennsylvania and a citizen of said state, brings this its bill agaist the Scandinavian-American Building Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Scandinavian-American Bank, a corporation organized and existing under and by virtue of the laws of the State of Washigton and a citizen of said state, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, all citizens of the State of Washington, save Hattie Davis Tennant, who is a citizen of the [3] State of California, copartners doing business under the name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, a citizen of the State of Missouri, P. Claude Hay, State Bank Commissioner for the State of Washington, and a citizen of the said State of Washington, and Forbes P. Haskell, Deputy State Bank Commissioner for the State of Washington, and a citizen of the State of Washington, and thereupon your orator complains and says as follows:

I.

Your orator is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and a citizen of said state.

II.

On information and belief the defendant Scan-

dinavian-American Building Company is a corporation organized and existing under the laws of the State of Washington, and a citizen of said state.

III.

On information and belief the defendant Scandinavian-American Bank is a corporation organized and existing under the laws of the state of Washington and a citizen of said state.

IV.

On information and belief the defendants Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George. L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, constitute a copartnership, doing business in Tacoma, Washington, under the name and style of Tacoma Millwork Supply Company, and all of said named defendants, with the exception of Hattie Davis Tennant, are citizens of the State of Washington, and the said Hattie Davis Tennant is a citizen of the State of California. [4]

V.

On information and belief the defendant G. Wallace Simpson is a citizen of the State of Missouri.

VI.

The defendant P. Claude Hay is the duly appointed, qualified and acting State Bank Commissioner for the State of Washington, and the defendant Forbes P. Haskell is the duly appointed, qualified and acting Deputy State Bank Commissioner

for the State of Washington, and the said P. Claude Hay and the said Forbes P. Haskell are citizens of the State of Washington.

VII.

Further your orator shows that the matter and said amount in the above-entitled action exceed, exclusive of cost, the sum or value of \$3,000.

VIII.

That at all the times hereinafter and in this bill mentioned the defendant Scandinavian-American Building Company, a corporation, was and now is the owner of lots ten (10), eleven (11) and twelve (12), in block one thousand and three (1003) as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T." which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3, 1875.

IX.

That heretofore and on or about the 5th day of February, 1920, your orator, McClintic-Marshall Company, entered into a written contract with the defendant, Scandinavian-American Building Company, a copy of which contract is hereto attached marked Exhibit "A," made a part hereof, and prayed to be taken as such.

X.

That thereafter and in accordance with the terms of said contract your orator, between the said 5th day of February, [5] 1920, and October 21, 1920, delivered to the said Scandinavian-American Building Company the structural steel called for in said contract, of the value of \$263,437.54, no part of

which has ever been paid, save and except the sum of \$86,805.17, and there was on the 24th day of December, 1920, and now is due to your orator for material so furnished to the said Scandinavian-American Building Company in accordance with the terms of said contract, the sum of \$176,632.37, with interest at the rate of six per cent per annum on \$45,820.66 from September 20, 1920, on \$95,501 from October 20, 1920, on \$31,842.94 from November 20, 1920, and on \$3,465.76 from December 20, 1920, said contract providing that the said Scandinavian-American Building Company should pay to your orator the sum of "eighty-five per cent of the full value of each shipment on the 20th day of the month following date of such shipment, the remaining fifteen per cent thirty days thereafter," and the dates from which interest is claimed being the 20th day of the month following date of shipment.

XI.

Further your orator shows that all of the material so sold and delivered by it to the Scandinavian-American Building Company was by the said defendant used in the erection of a certain sixteen-story building, situate upon the lands and premises hereinbefore described, said lands and premises being owned by the said Scandinavian-American Building Company as hereinbefore alleged, and all of said lands and premises were necessary for the construction and convenient use of said building.

XII.

Further your orator shows that on, to wit, the

24th day of December, 1920, there being due from said Scandinavian-American Building Company to your orator the sum of \$176,632.37, with interest from the dates and on the amounts hereinbefore specified, [6] and it being without any security for the payment of said money, it duly filed and recorded with the County Auditor for Pierce County, Washington, being the county in which said property is situate, its claim of lien, duly verified by oath, said lien being filed under and by virtue of section 1134, of Remington's Codes and Statutes of the State of Washington, a copy of which said lien is hereto attached marked Exhibit "B," made a part hereof, and prayed to be taken as such. Said lien was recorded by the auditor of Pierce County, Washington, in volume 15 of Liens, at page 613.

XIII.

Further your orator shows that the defendants, Scandinavian-American Bank, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, P. Claude Hay and Forbes P. Haskell as State Bank Commissioner and Deputy State Bank Commissioner respectively, have or claim to have some right, title, lien or interest in and to said premises but whatever the nature of said right, title, interest or claim may be, if any,

the same is junior, subsequent and inferior to the lien of the said complainant.

IX.

Further your orator shows and represents to the Court that it has been compelled to employ attorneys for the purpose of protecting and preserving its interest and enforcing its lien, and that it is entitled under and by virtue of section 1141 of Remington's Codes and Statutes of the State of Washington, to the allowance of a reasonable attorneys fees, which it alleges and avers to be the sum of \$15,000. [7]

In consideration whereof, and forasmuch as your orator is remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable, your orator therefore prays the decree of this Honorable Court:

1. That the defendants and each of them may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were herein expressed, and they thereunto particularly interrogated, but not under oath, answer under oath being hereby expressly waived.

2. That your orator may have a judgment against the defendant Scandinavian-American Building Company for the sum of One Hundred Seventy-six Thousand Six Hundred Thirty-two and $\frac{37}{100}$ Dollars (\$176,632.37), with interest at the rate of six per cent per annum on \$45,820.66, from September 20, 1920, on \$95,501, from October 20, 1920, on \$31,842.94 from November 20, 1920, on \$3,465.76 from December 20, 1920, together with the further sum of

\$15,000 as and for attorneys fees for the foreclosure of its said lien, and for all its costs and expenses herein incurred, and to be incurred, and that the same and the whole thereof be adjudged a first and valid lien against the lands and premises hereinbefore described. Further your orator prays that said lands and premises and the building thereon situated be adjudged and decreed to be sold in satisfaction of the amount so found due to your orator according to law and the practice of this court, and that the proceeds of such sale be applied in payment of the costs of these proceedings and sale and reasonable attorneys fees in the sum of \$15,000, and your said orator's claim amounting to the sum of \$176,632.37, besides interest as hereinbefore specified. [8]

Further your orator prays that said defendants and all persons claiming under them or either of them subsequent to the filing and recording of your orator's lien in the office of the auditor of Pierce County, Washington, either as purchasers or encumbrancers, lienors or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in the said premises and every part thereof, and that it may have a judgment and execution against the defendant, Scandinavian-American Building Company, for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the satisfaction of its said judgment. That your orator or any other parties to this suit may become a purchaser at said sale, and that the officer executing

the sale shall execute and deliver the necessary conveyances to the purchaser or purchasers, and that said purchasers or purchaser at said sale may be let into the possession of said premises.

3. That your orator may have such other and further relief in the premises as may be just and equitable, and as your Honor shall deem just.

May it please your Honor to grant to your orator writs of subpoena, to be directed to the said defendants, Scandinavian-American Building Company, a corporation, Scandinavian-American Bank, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, copartners doing business under the firm name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, P. Claude Hay, as State Bank Commissioner, for the State of Washington, and [9] Forbes P. Haskell as Deputy State Bank Commissioner for the State of Washington, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named to be and appear before your Honor in this Honorable Court, then and there severally to answer all and singular the matter aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide and per-

form such other and further orders or decrees as to your Honor shall seem meet.

McCLINTIC-MARSHALL COMPANY, a Corporation.

By ELMER M. HAYDEN,
MAURICE A. LANGHORNE,
F. D. METZGER,
Attorney for Complainant. [10]

Exhibit "A."

This AGREEMENT, made this 5th day of February, 1920, by and between McClintic-Marshall Company of Pittsburgh, Pennsylvania Corporation, hereinafter termed the CONTRACTOR, and Scandinavian-American Building Co., Tacoma, Washington, hereinafter termed the PURCHASER,

WITNESSETH, That in consideration of the mutual promises hereinafter stated, the parties hereto mutually agree as follows:

ARTICLE I. The Contractor agrees to furnish and deliver, f. o. b. cars, their works present rate of freight allowed to Tacoma, Washington, exclusive of spotting, switching or other delivery charges, the structural steelwork for the Scandinavian-American Bank Building located at Pacific Ave. and Eleventh Street, Tacoma, Washington, in accordance with the plans Job No. 148 Sheets 1 to 4 inclusive and 8 to 10 and specifications covering Steel and Iron Work as prepared by Frederick Webber, Architect and Engineer, 403 Morris Bldg., Phila., Pa.

Quality of material and workmanship and details of construction not specifically provided for are to be in accordance with the Standard Specifications of the Contractor for work of this Character.

ARTICLE II. The contractor agrees to begin shipment of the material within 60 days and to make complete shipment of the material *with* 120 days after the date of this Agreement, provided all the required data are furnished by the Purchaser to the Contractor within 5 days after the date of this Agreement, and provided further, that the Contractor is not obstructed or delayed by any act, neglect or default of the Purchaser or their employees or agents or by the Rolling Mills, Transportation, Strikes, Fire, Storms, Floods or other causes beyond the reasonable control of the Contractor. [11]

The Purchaser agrees to accept delivery of material when forwarded from Contractor's works or upon transfer of title to pay for said material as though it had been delivered under the terms of the contract and to reimburse the Contractor for any expense it may incur in storing, caring for and rehandling the same.

ARTICLE III. The Purchaser agrees to furnish the Contractor with complete and final data for the work within five (5) days after the date of the Agreement.

ARTICLE IV. Upon written request, the Contractor shall provide, at such times and places as will least interfere with its operations, facilities for the inspection of the work by the Purchaser,

but the Contractor assumes no liability for injuries sustained by the Inspector, except injuries due to the gross negligence or willful default of the Contractor. Any material condemned by the Inspector which is not in accordance with the plans and specifications and is, on this account, unsuitable for the purpose intended, will be replaced by other and suitable material. Any rejection of plain material by the Inspector must be made before shipment from the Rolling Mill and any rejection of finished material on account of workmanship must be made before shipment from the Contractor's works.

ARTICLE V. In consideration of the faithful execution of the work above specified to be performed by the Contractor, the Purchaser hereby promises and agrees to pay to the Contractor the sum of five nine-tenths cents (5.9¢) per pound f. o. b. their works present rate of freight allowed to Tacoma, Washington, exclusive of spotting, switching or other delivery charges. If freight rates or taxes are increased before shipment is made the Purchaser is to reimburse the Contractor for such extra freight and tax paid. In funds current at par in Pittsburgh, or New York City as follows: 85% of the full value of each shipment on the 20th day of the month following date of such shipment, remaining 15% thirty days thereafter. [12]

ARTICLE VI. Failure by the Purchaser to make payments at the times stated in this Agreement shall give the Contractor the right to suspend work until payment is made, or, at his option, after

thirty (30) days notice in writing, should the Purchaser continue in default, to terminate this contract and recover the price of all work done and material provided and all damages sustained; and such failure to make payments at the time stated shall be a bar to any claim by the Purchaser against the Contractor for delay in completion of the work.

ARTICLE VII. No alteration shall be made in the work except upon written order of the Purchaser or his authorized representative, and the amount to be paid by the Purchaser or allowed by the contractor on account of such alterations is to be agreed upon within ten days from date of same. Unless otherwise agreed upon, additional work will be charged by the Contractor at exact cost to the Contractor plus Fifteen (15%) per cent, for profit.

ARTICLE VIII. Should the Contractor at any time refuse or neglect to carry on the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the Purchaser, if not in default, shall be at liberty, after ten days written notice to the Contractor, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract.

ARTICLE IX. If at any time there shall be found established evidence of any lien or claim for which the Purchaser might be held liable arising out of any work or materials furnished by the Contractor, the Purchaser, upon presenting such evidence to the Contractor, may retain out of any

payment due or to become due an amount sufficient to indemnify them against such lien or claim, until it has been settled or discharged or until the Contractor furnishes to the Purchaser an indemnity bond, equal in amount to said lien or claim.
[13]

ARTICLE X. It is also further agreed between the parties hereto that any dispute whatsoever growing out of this Agreement shall be referred to three Arbitrators, one to be appointed by each of the parties to this Agreement and the third by the two thus chose. Each Arbitrator shall be qualified by experience in Engineering and Contracting to perform the duties assigned to him. The decision of any two of these shall be final and binding, and each of the parties to this agreement shall pay one-half the expense of such reference.

IN WITNESS WHEREOF the Parties hereto have executed the Agreement at Pittsburgh, Pa., the day and year first above written. Executed in duplicate.

SCANDINAVIAN-AMERICAN BLDG. CO.

By CHARLES DRURY, Prest.

J. V. SHELDON, Secy.

McCLINTIC-MARSHALL COMPANY.

C. D. MARSHALL,

President.

Witness:

G. L. TAYLOR.

Filed in the United States District Court, Western District of Washington, Southern Division.

Jan. 18, 1921, 3:00 P. M. F. M. Harshberger,
Clerk. By Ed M. Lakin, Deputy. [14]

Exhibit "B."

“McCLINTIC-MARSHALL COMPANY, a Cor-
poration,

Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING
COMPANY, a Corporation.

NOTICE OF CLAIM OF LIEN.

Notice is hereby given that on the 22d day of May, 1920, McClintic-Marshall Company, a corporation duly organized and existing under and by virtue of the laws of the state of Pennsylvania, having its principal office in the city of Pittsburgh, in said state, at the request and instance of the Scandinavian-American Building Company, a corporation duly organized and existing under and by virtue of the laws of the State of Washington with its principal place of business at Tacoma, commenced to furnish material to the said Scandinavian-American Building Company to be used upon and in the construction of a certain building situate on and covering the whole of lots ten (10), eleven (11) and twelve (12) block 1003 as the same are shown and designated upon a certain plat entitled “Map of New Tacoma, W. T.,” which property the owner or reputed owner is Scandinavian-American Building Company, the furnishing of which material ceased on October 21st, 1920.

That said material so furnished by claimant to the Scandinavian-American Building Company, a corporation, was of the value of \$263,437.54, upon which amount said Scandinavian-American Building Company, a corporation, is entitled to a credit of \$86,805.17, and there is now due and owing claimant the sum of \$176,632.37, besides interest at the rate of 6% per annum on \$45,820.66 from September 20th, 1920, interest at the [15] rate of 6% per annum on \$95,501.00 from October 20th, 1920, interest at the rate of 6% per annum on \$31,842.94 from November 20, 1920, and interest at the rate of 6% per annum on \$3,465.76 from December 20th, 1920.

And the undersigned claims a lien upon the property herein described for said sum of \$176,-632.37, together with interest at the rate of 6% per annum on the amounts herein specified.

McCLINTIC-MARSHALL COMPANY a
Corporation,

Claimant.

By HAYDEN, LANGHORNE & METZ-
GER,

Its Attorneys.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jan. 18, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [16]

Motion to Dismiss Bill of Complaint.

Come now the Scandinavian-American Building Company, a corporation, Scandinavian-American Bank, a corporation, Claude P. Hay, as State Bank Commissioner for the State of Washington, and Forbes P. Haskell, as Deputy State Bank Commissioner of the State of Washington, defendants above named, and each and every one of them severally moves that the bill of complaint in the above-entitled suit and the whole thereof be dismissed, because the facts therein stated are not sufficient to constitute a valid cause of action in equity against the defendants, either severally or jointly with the other defendants in the following respects and each of them. [17]

I.

It appears from the bill of complaint that' this court has no jurisdiction to hear and determine this suit.

II.

The bill of complaint does not state facts sufficient to constitute a valid cause of action against these defendants, or either of them, either severally or jointly with the other defendants.

III.

There is a nonjoinder of necessary parties plaintiff, in that all of the persons interested in the subject matter of the controversy and who may be interested with the complainant herein, are not joined as plaintiffs in the action.

IV.

There is a nonjoinder of necessary parties in that all of the persons adversely interested to the complainant are not made defendants, in that there are a great many lien claimants who have valid and existing claims against the defendant, Scandinavian-American Building Company, who have an interest in the said suit adversely to the complainant herein.

V.

The bill of complaint shows that the lien claimed by the complainant herein is claimed to exist under and by virtue of Section 1134 of Remington's Codes and Statutes of the State of Washington, and these defendants say that under and by virtue of said Codes and Statutes of said State, there can be maintained but one cause of action for the foreclosure of any lien or liens upon the building in [18] controversy in this suit. That there are many lien claimants whose claims against the defendant Scandinavian-American Building Company, are less than the sum of \$3,000.00 and that by reason thereof this court has no jurisdiction to determine the matter in controversy.

VI.

The bill of complaint shows that the claim of the complainant is based upon a certain contract between said complainant and the defendant Scandinavian-American Building Company, a copy of which contract is attached to said complaint, marked Exhibit "A," and made a part thereof, and that by the terms of said contract it was expressly provided as follows:

“It is also further agreed between the parties hereto that any dispute whatsoever growing out of this Agreement shall be referred to three Arbitrators, one to be appointed by each of the parties to this agreement, and the third by the two thus chosen. Each arbitrator shall be qualified by experience in Engineering and Contracting to perform the duties assigned to him. The decision of any two of these shall be final and binding, and each of the parties to this agreement shall pay one-half of the expense of such reference.”

A meritorious dispute growing out of said contract arose between the complainant and the defendant, Scandinavian-American Building Company, and that said defendant, Scandinavian-American Building Company demanded an arbitration of the matters in dispute, and that the complainant failed and refused to arbitrate the said matters in dispute, and that by reason of said failure the said complainant [19] is without authority in law or equity to maintain and is estopped from maintaining this suit.

GUY E. KELLY,
THOS. MacMAHON,
F. D. OAKLEY,

Solicitors for the Above-named Defendants, Scandinavian-American Building Company, Scandinavian-American Bank, Claude P. Hay, Bank Commissioner, and Forbes P Haskell, Deputy Bank Commissioner.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Feb. 7, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [20]

Order Denying Motion to Dismiss Bill of Complaint.

Came on this cause to be heard on the 14th day of February, 1921, upon the motion of the defendants Scandinavian-American Building Company, a corporation, and Scandinavian-American Bank, a corporation, P. Claude Hay, as State Bank Commissioner for the State of Washington, and Forbes P. Haskell, as Deputy State Bank Commissioner for the State of Washington, to dismiss the bill of complaint upon the grounds set forth and recited in their motion heretofore filed, Frank D. Oakley, Esquire, appearing on behalf of said named defendants, and Maurice A. Langhorne of Hayden, Langhorne & Metzger, appearing in behalf of the complainant, and in opposition thereto.

After argument of counsel, the Court being fully advised in the premises, IT IS NOW ORDERED, ADJUDGED AND DECREED, AND THIS DOES ORDER, ADJUDGE AND DECREE that said motion to dismiss so filed on behalf of said defendants, be and the same is hereby denied and overruled.

To the ruling of the Court in denying the motion to dismiss Frank D. Oakley, Esq., of counsel for the defendants, duly excepted, and his exception is hereby allowed.

Done in open court this 17th day of February, 1921.

EDWARD E. CUSHMAN,
District Judge. [21]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Feb. 17, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [22]

**Order Permitting Plaintiff to File Amended
Complaint.**

Upon stipulation of counsel for the complainant and of counsel for all the defendants who have appeared herein—

IT IS ORDERED that complainant have leave to file and serve an amended bill of complaint herein, joining as parties thereto all persons, firms and corporations who have filed or claim liens against the property described in the complaint since the filing of the original bill of complaint herein.

Done in open court this 22 day of April, 1921.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Apr. 22, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [23]

Amended and Supplemental Bill of Complaint. [24

To the Honorable EDWARD E. CUSHMAN,
Judge of the District Court of the United
States, for the Western District of Washington,
Southern Division:

McClintic-Marshall Company, a corporation, organized and existing under the laws of the State of Pennsylvania, and a citizen of said state, by leave of court first had and obtained, brings this, its amended and supplemental bill of complaint against the Scandinavian-American Building Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and a citizen of said state, Scandinavian-American Bank, a corporation, organized and existing under and by virtue of the laws of the State of Washington, and a citizen of said state, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, all citizens of the State of Washington, save Hattie Davis Tennant who is a citizen of the State of California, copartners doing business under the name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, a citizen of the State of Missouri, P. Claude Hay, State Bank Commissioner for the State of Washington and a citizen of said State of Washington, and Forbes P. Haskell, Deputy State Bank Commissioner for the

State of Washington and a citizen of the State of Washington, Savage-Scofield Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Puget Sound Iron & Steel Works, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, E. E. Davis & Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, St. Paul & Tacoma Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Far West Clay Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Henry Mohr Hardware Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Hune & Mottet, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Edward Miller Cornice & Roofing Company, a corporation organized and existing under and by virtue of the laws of *the laws* of the State of Washington and a citizen of said state, Washington Brick Lime & Sewer Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Otis Elevator Company, a corporation organized and existing under and by virtue of the laws of the

State of New Jersey and a citizen of said state, and duly admitted to do business in the State of Washington by virtue of having complied with the laws of said State of Washington relative to foreign corporations, United States Machine & Engineering Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Colby Star Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Tacoma Shipbuilding Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Crane Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and a citizen of that state, but admitted to do business in the State of Washington by virtue of having complied with the laws of said State of Washington, relative to foreign corporations, Ben Olson Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and a citizen of said state, H. C. Greene doing business as H. C. Greene Iron Works, citizen of the State of Washington, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, both citizens of the State of Washington, S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, both citizens of the State of Washington, J. D. Mullins doing business as J. D.

Mullins Bros., a citizen of the State of Washington, S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, both citizens of the State of Washington, Morris Kleiner doing business as Liberty Lumber & Fuel Company, a citizen of the State of Washington, J. A. Soderberg doing business as West Coast Monumental Company, a citizen of the State of Washington, Theodore Hedlund doing business as Atlas Paint Company, a citizen of the State of Washington, F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcelino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short; Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boecker, William L. Owen, F. N. Bergen, F. H. Godfrey, and W. E. Morris, all of whom are citizens and residents of the State of Washington, and thereupon your orator complains and says, as follows, to wit:
[25]

I.

Your orator is a corporation duly organized and

existing under and by virtue of the laws of the State of Pennsylvania and a citizen of said state.

II.

On information and belief the defendant Scandinavian-American Building Company is a corporation organized and existing under the laws of the State of Washington, and a citizen of said state, and a resident of the southern division of the Western District of Washington.

III.

On information and belief the defendant Scandinavian-American Bank is a corporation organized and existing under the laws of the State of Washington, and a citizen of said state, and a resident of the southern division of the western district of the State of Washington.

IV.

On information and belief the defendants Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, constitute a copartnership, doing business in Tacoma, Washington, under the name and style of Tacoma Millwork Supply Company, and all of said named defendants with the exception of Hattie Davis Tennant, are citizens of the State of Washington, and the said Hattie Davis Tennant is a citizen of the State of California.

V.

On information and belief the defendant G. Wal-

lace Simpson is a citizen of the State of Missouri.

VI.

The defendant P. Claude Hay is the duly appointed, qualified and acting State Bank Commissioner for the State of Washington, and the defendant Forbes P. Haskell is the duly appointed, qualified and acting Deputy State Bank Commissioner for the State of Washington, and the said P. Claude Hay and the said Forbes P. Haskell are citizens of the State of Washington.

VII.

On information and belief the defendants Savage-Scofield Company, Puget Sound Iron & Steel Works, E. E. Davis & Company, St. Paul and Tacoma Lumber Company, Far West Clay Company, Henry Mohr Hardware Company, Inc., Hunt & Mottet, Edward Miller Cornice & Roofing Company, Washington Brick Lime & Sewer Company, United States Machine & Engineering Company, Colby Star Manufacturing Company, Tacoma Shipbuilding Company, and Ben Olson Company, are all corporations organized and existing under the laws of the State of Washington and citizens of said state.

VIII.

On information and belief the defendant Otis Elevator Company is a corporation, duly organized and existing under and by virtue of the laws of the State of New Jersey and a citizen of the state, but has been admitted to do business in the State of Washington by virtue of having complied with

the laws of the State of Washington relative to foreign corporations.

IX.

On information and belief the defendant Crane Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Illinois and a citizen of said state, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of said State of Washington relative to foreign corporations.

X.

On information and belief the defendant H. C. Greene, doing business as H. C. Greene Iron Works, the defendant J. D. Mullins, doing business as J. D. Mullins Bros., S. D. Matthews and Frank L. Johns, a copartnership doing business under the name of City Lumber Agency, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner doing business as Liberty Lumber & Fuel Company, J. A. Soderberger doing business as West Coast Monumental Company, Theodore Hedlund doing business as the Atlas Paint Company, are all Citizens of the State of Washington and residents of the southern division of the western district of Washington. [26]

XI.

On information and belief the defendants F. W. Madsen, Gustaf Jonasson, N. A. Hanson, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, Sherman Wells, Carl J. Gerringier, George Gerringier, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergren, F. H. Godfrey and W. E. Morris are each and every one of them citizens of the State of Washington and residents of the southern division of the western district of Washington.

XII.

Further your orator shows that the matter and amount in the above-entitled action exceed, exclusive of cost, the sum or value of \$3,000.

XIII.

That at all the times hereinafter and in this bill mentioned the defendant Scandinavian-American Building Company, a corporation, was and now is the owner of lots ten (10), eleven (11) and twelve (12), in block one thousand and three (1003), as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," which

was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3, 1875.

XIV.

That heretofore and on or about the 5th day of February, 1920, your orator, McClintic-Marshall Company, entered into a written contract with the defendant Scandinavian-American Building Company, a copy of which contract is hereto attached marked Exhibit "A," made a part hereof, and prayed to be taken as such.

XV.

That after and in accordance with the terms of said contract your orator between the said 5th day of February, 1920, and October 21, 1920, delivered to the said Scandinavian-American Building Company the structural steel called for in said contract, of the value of \$263,437.54, no part of which has ever been paid save and except the sum of \$86,805.17, and there was on the 24th day of December, 1920, and now is due to your orator for material so furnished to the said Scandinavian-American Building Company in accordance with the terms of said contract, the sum of \$176,632.37, with interest at the rate of six per cent per annum on \$45,820.66 from September 20, 1920, on \$95,501.00 from October 20, 1920, on \$31,842.94 from November 20, 1920, and on \$3,465.76 from December 20, 1920, said contract providing that the said Scandinavian-American Building Company should pay to your orator the sum of "eighty five per cent of the full value of each shipment on the 20th day of the

month following date of such shipment, the remaining fifteen per cent thirty days thereafter," and the dates from which interest is claimed being the 20th day of the month following date of shipment.

XVI.

Further your orator shows that all of the material so sold and delivered by it to the Scandinavian-American Building Company was by the said defendant used in the erection of a certain sixteen story-building, situate upon the lands and premises hereinbefore described, said lands and premises being owned by the said Scandinavian-American Building Company as hereinbefore alleged, and all of said lands and premises were necessary for the construction and convenient use of said building.

XVII.

Further your orator shows that on, to wit, the 24th day of December, 1920, there being due from said Scandinavian-American Building Company to your orator the sum of \$176,632.37 with interest from the dates and on the amounts hereinbefore specified, and it being without any security for the payment of said money, it duly filed and recorded with the County Auditor for Pierce County, Washington, being the county in which said property is situate, its claim of lien, duly verified by oath, said lien being filed under and by virtue of section 1134 of Remington's Codes and Statutes of the State of Washington, a copy of which said lien is hereto attached marked Exhibit "B," made a part hereof, and prayed to be taken as such. Said lien

was recorded by the auditor of Pierce County, Washington, in volume 15 of liens at page 613.

XVIII.

Further your orator shows that the defendants Scandinavian-American Bank, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. [27] T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, P. Claude Hay and Forbes P. Haskell as State Bank Commissioner and Deputy State Bank Commissioner, respectively, and Savage-Scofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, E. E. Davis & Company, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick Lime & Sewer Company, a corporation, Otis Elevator Company, a corporation, United States Machine & Engineering Company, a corporation, Colby Star Manufacturing Company, a corporation, Tacoma Shipbuilding Company, a corporation, Crane Company, a corporation, and Ben Olson Company, a corporation, H. C. Greene doing business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and

style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner doing business as Liberty Lumber & Fuel Company, J. A. Soderberg doing business as West Coast Monumental Company, Theodore Hedlund doing business as Atlas Paint Company, F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. VanBuskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Titkalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, Sherman Wells, Carl J. Geringer, George Geringer, F. R. Schoen, A. W. Aufang, C. H. Boecker, William L. Owen, F. N. Bergen, F. H. Godfrey and W. E. Morris; Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, respectively, have or claim to have some right, title, lien or interest in and to said premises, but whatever the nature of said right, title, interest or claim may be, if any, the same

is junior, subsequent and inferior to the lien of the said complainant.

XIX.

Further your orator shows and represents to the court that it has been compelled to employ attorneys for the purpose of protecting and preserving its interest and *and* enforcing its lien, and that it is entitled under and by virtue of section 1134 of Remington's Codes and Statutes of the State of Washington, to the allowance of a reasonable attorney's fee, which it alleges and avers to be the sum of \$15,000.

XX.

That your complainant is not now prosecuting nor has it ever prosecuted any action at law or any proceeding whatsoever, either at law or in equity, for the recovery of the debt so due to it from the said defendant, Scandinavian-American Building Company.

In consideration whereof, and forasmuch as your orator is remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable, your orator therefore prays the decree of this honorable court.

1. That the defendants and each of them may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were herein expressed, and they thereunto particularly interrogated, but not under oath, answer under oath being hereby expressly waived.

2. That your orator may have a judgment against the defendant Scandinavian-American Building Company for the sum of One Hundred Seventy-six Thousand Six Hundred Thirty-two and $37/100$ Dollars (\$176,632.37) with interest at the rate of six per cent per annum on \$45,820.66, from September 20, 1920, on \$95,501 from October 20, 1920, on \$31,842.94 from November 20, 1920, on \$3,465.76 from December 20, 1920, together with the further sum of \$15,000 as and for attorneys fees for the foreclosure of its said lien, and for all its costs and expenses herein incurred, and to be incurred, and that the same and the whole thereof be adjudged a first and valid lien against the lands and premises hereinbefore described. Further your orator prays that said lands and premises and the building thereon [28] situated be adjudged and decreed to be sold in satisfaction of the amount so found due to your orator according to law and the practice of this court, and that the proceeds of such sale be applied in payment of the costs of these proceedings and sale and reasonable attorneys fees in the sum of \$15,000.00, and your said orator's claim amounting to the sum of \$176,632.37, besides interest as hereinbefore specified.

Further your orator prays that said defendants and all persons claiming under them or either of them subsequent to the filing and recording of your orator's lien in the office of the auditor of Pierce County, Washington, either as purchasers or encumbrancers, lienors, or otherwise, may be barred and foreclosed of all right, claim or equity of re-

demption in the said premises and every part thereof, and that it may have a judgment and execution against the defendant, Scandinavian-American Building Company, for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the satisfaction of its said judgment. That your orator or any other parties to this suit may become a purchaser at said sale, and that the officer executing the sale shall execute and deliver the necessary conveyances to the purchaser or purchasers, and that said purchaser or purchasers at said sale may be let into the possession of said premises.

3. That your orator may have such other and further relief in the premises as may be just and equitable, and as your Honor shall deem just.

May it please your Honor to grant to your orator writs of subpoena, to be directed to the said defendants, Scandinavian-American Building Company, a corporation, Scandinavian-American Bank, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, P. Claude Hay as State Bank Commissioner for the State of Washington, and Forbes P. Haskell as Deputy State Bank Commissioner for the State of Washington, Savage-Scotfield Company, a corporation, Puget Sound Iron & Steel

Works, a corporation, E. E. Davis & Company, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick Lime & Sewer Company, a corporation, Otis Elevator Company, a corporation, United States Machine & Engineering Company, a corporation, Colby Star Manufacturing Company, a corporation, Tacoma Shipbuilding Company, a corporation, Crane Company, a corporation, and Ben Olson Company, a corporation, H. C. Greene, doing business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kliener, doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Company, Theodore Hedlund doing business as Atlas Paint Company, F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. VanBuskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave

Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short; and Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey and W. E. Morris, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named to be and appear before your Honor in this honorable court, then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide and perform such other and further orders or decrees as to your Honor shall seem meet.

McCLINTIC-MARSHALL COMPANY,
a Corporation,

MAURICE A. LANGHORNE,

By ELMER M. HAYDEN,

F. D. METZGER,

Attorneys for Complainant. [29]

United States of America,
Western District of Washington,
Southern Division,—ss.

Maurice A. Langhorne, being duly sworn, deposes and says: That he is one of the attorneys for the above-named complainant; that he has read the foregoing Bill of Complaint, knows the contents

thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

That he makes this verification for the reason that the complainant is a nonresident of the State of Washington and has no officer or agent within this district or within the State of Washington present to verify said Bill.

MAURICE A. LANGHORNE.

Subscribed and sworn to before me this 21st day of April, 1921.

F. D. METZGER,

Notary Public in and for the State of Washington,
Residing at Tacoma.

Exhibit "A."

"THIS AGREEMENT, made this 5th day of February, 1920, by and between McCLINTIC-MARSHALL COMPANY of Pittsburg, a Pennsylvania corporation, hereinafter termed the CONTRACTOR, and SCANDINAVIAN-AMERICAN BUILDING CO., Tacoma, Washington, hereinafter termed the PURCHASER.

WITNESSETH, That in consideration of the mutual promises hereinafter stated, the parties hereto mutually agree as follows:

ARTICLE I. The Contractor agrees to furnish and deliver F. O. B. cars, their works present rate of freight allowed to Tacoma, Washington, exclusive of spotting, switching or other delivery charges, the structural steelwork, for the Scandinavian-

American Bank Building, located at Pacific Ave. and Eleventh Street, Tacoma, Washington, in accordance with plans, Job No. 148 Sheets 1 to 4 inclusive and 8 to 10 and specifications covering Steel and Iron Work as prepared by Frederick Webber, Architect and Engineer, 403 Morris Bldg., Phila., Pa.

Quality of material and workmanship and details of construction not specifically provided for are to be in accordance with the Standard Specifications of the Contractor for work of this character.

ARTICLE II. The Contractor agrees to begin shipment of the material within 60 days and to make complete shipment of the material within 120 days after the date of this Agreement, provided all the required data are furnished by the Purchaser to the Contractor within five (5) days after the date of this Agreement, and provided further, that the Contractor is not obstructed or delayed by any act, neglect or default of the Purchaser or their employees or agents, or by the Rolling Mills, Transportation, Strikes, Fire, Storms, Floods or other causes beyond the reasonable control of the Contractor.

The Purchaser agrees to accept delivery of material when forwarded from Contractor's works, or, upon transfer of title, to pay for said material as though it had been delivered under the terms of the contract and to reimburse the Contractor for any expense it may incur in storing, caring for and re-handling the same.

ARTICLE III. The Purchaser agrees to furnish the Contractor with complete and final data for this work five (5) days after the date of this Agreement. [30]

ARTICLE IV. Upon written consent, the Contractor shall provide, at such time and places as will least interfere with its operations, facilities for the inspection of the work by the Purchaser, but the Contractor assumes no liability for injuries sustained by the Inspector, except injuries due to the gross negligence or willful default of the Contractor. Any material condemned by the Inspector which is not in accordance with the plans and specifications and is, on this account, unsuitable for the purpose intended, will be replaced by other and suitable material. Any rejection of plain material by the Inspector must be made before shipment from the Rolling Mill and any rejection of finished material on account of workmanship must be made before shipment from the Contractor's works.

ARTICLE V. In consideration of the faithful execution of the work above specified to be performed by the Contractor, the Purchaser hereby promises and agrees to pay to the Contractor the sum of five and nine-tenths (5.9c) per pound f. o. b., their works present rate of freight allowed to Tacoma, Washington, exclusive of spotting, switching or other delivery charges. If freight rates or taxes are increased before shipment is made, the Purchaser is to reimburse the Contractor for such extra freight and tax paid, in funds current at part in Pittsburgh, or New York City as follows: 85% of the full value of each shipment on the 20th day of

the month following date of such shipment, remaining 15% thirty days thereafter.

ARTICLE VI. Failure by the Purchaser to make payments at the times stated in this Agreement shall give the Contractor the right to suspend work until payment is made, or, at his option, after thirty (30) days' notice in writing, should the Purchaser continue in default, to terminate this contract and recover the price of all work done and materials provided and all damages sustained; and such failure to make payments at the times stated shall be a bar to any claim by the Purchaser against the Contractor for delay in completion of the work.

ARTICLE VII. No alteration shall be made in the work except upon written order of the Purchaser or his authorized representative, and the amount to be paid by the Purchaser or allowed by the Contractor on account of such alterations is to be agreed upon within ten days from date of same. Unless otherwise agreed upon, additional work will be charged by the Contractor at exact cost to the Contractor plus Fifteen (15%) per cent. for profit.

ARTICLE VIII. Should the Contractor at any time refuse or neglect to carry on the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the Purchaser, if not in default, shall be at liberty, after ten days' written notice to the Contractor, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract.

ARTICLE IX. If at any time there shall be

found established evidence of any lien or claim for which the Purchaser might be held liable arising out of any work or materials furnished by the Contractor, the Purchaser, upon presenting such evidence to the Contractor, may retain out of any payment due or to become due an amount sufficient to indemnify them against such lien or claim, until it has been settled or discharged or until the Contractor furnishes to the Purchaser an indemnity bond, equal in amount to said lien or claim.

ARTICLE X. It is also further agreed between the parties hereto that any dispute whatsoever growing out of this Agreement shall be referred to three Arbitrators, one to be appointed by each of the parties to this Agreement and the third by the two thus chosen. Each Arbitrator shall be qualified by experience in Engineering and Contracting to perform the duties assigned to him. The decision of any two of these shall be final and binding, and each of the parties to this Agreement shall pay one-half the expense of such reference.

IN WITNESS WHEREOF the parties hereto have executed this Agreement at Pittsburgh, Pa., the day and year first above written. Executed in duplicate.

SCANDINAVIAN-AMERICAN BLDG.
CO.,

By CHARLES DRURY, Prest.,
J. V. SHELDON, Secy.

McCLINTIC-MARSHALL COMPANY,
C. L. MARSHALL, President.

Witness:

G. L. TAYLOR. [31]

Exhibit "B."

“McCLINTIC-MARSHALL COMPANY, a Corporation,

Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING COMPANY, a Corporation,

NOTICE OF CLAIM OF LIEN.

NOTICE is hereby given that on the 22d day of May, 1920, McClintic-Marshall Company, a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office in the city of Pittsburgh, in said state, at the request and instance of Scandinavian-American Building Company, a corporation duly organized and existing under and by virtue of the laws of the State of Washington with its principal place of business at Tacoma, commenced to furnish material to the said Scandinavian-American Building Company to be used upon and in the construction of a certain building situate on and covering the whole of Lots ten (10), eleven (11) and twelve (12), block 1003, as the same are shown and designated upon a certain plat entitled “Map of New Tacoma, W. T.,” which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3d, 1875, of which property the owner or reputed owner is Scandinavian-American Building Company, the furnishing of which material ceased on October 21st, 1920.

That said material so furnished by claimant to the Scandinavian-American Building Company, a corporation, was of the value of \$263,437.54, upon which amount said Scandinavian-American Building Company, a corporation, is entitled to a credit of \$86,805.17, and there is now due and owing claimant the sum of \$176,632.37 besides interest at the rate of 6% per annum or \$45,820.66 from September 20th, 1920, interest at the rate of 6% per annum on \$95,501.00 from October 20th, 1920, interest at the rate of 6% per annum on \$31,842.94 from November 20th, 1920, and interest at the rate of 6% per annum on \$3,465.76 from December 20th, 1920.

And the undersigned claims a lien upon the property herein described for said sum of \$176,632.37, together with interest at the rate of 6% per annum on the amounts herein specified.

McCLINTIC-MARSHALL COMPANY, a
Corporation,

Claimant,

By HAYDEN, LANGHORNE & METZGER,

Its Attorneys.

State of Washington,
County of Pierce,—ss.

M. A. Langhorne, being first duly sworn, says: I am one of the attorneys for the claimant above-named; I have heard the foregoing claim read, know the contents thereof and believe the same to be true.

M. A. LANGHORNE.

Subscribed and sworn to before me this 24th day of December, 1920.

F. D. METZGER,
Notary Public in and for the State of Washington,
Residing at Tacoma.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Apr. 22, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [32]

**Petition of Tacoma Millwork Supply Co. for
Appointment of Receiver.**

Application of Ann Davis and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased, and Ann Davis and R. T. Davis, Jr., et al., Copartners Doing Business as Tacoma Millwork Supply Company, for Appointment of Receiver.

To the Honorable E. E. CUSHMAN, Judge of the District Court of the United States, for the Western District of Washington:

Your petitioners respectively renew their application for the appointment of a receiver of the Scandinavian-American Building Company in any and all of its assets, your orators particularly calling his Honorable Court's attention to the application heretofore made in the answer and cross-complaint of Ann Davis and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased; R. T. Davis, Jr., Lloyd Davis; Harry L. Davis; George L. Davis;

Maude A. Davis; Marie A. Davis; Ruth G. Davis; Hattie Davis Tennant and Ann Davis, comprising a partnership acting under the firm name and style of Tacoma Millwork Supply Company, and to the recitals therein contained as to the rights of these your petitioners, and the remedy desired, which cross-complaint was filed and served on or about the 20th day of January, 1921.

2. Your petitioners further respectively call this Honorable Court's attention to the affidavit of R. T. Davis, Jr., one of the members of said partnership and its managing officer, and the recitals therein contained, which are to the effect that the building is deteriorating because of lack of paint, that the steel work for the two last stories is unriveted, a matter of violation of the ordinances of the City of Tacoma, a polity of the State of Washington, and which renders the structure, as to said two stories, dangerous to the passersby; that an officer of the State Court, acting without authority, has assumed ownership over the assets of said Building Company and has without notice or warrant in law sold, for a wholly inadequate price, certain of the assets of said Building Company, and is about to sell other assets to the detriment of the lien claimants, including your petitioners. [33]

3. That your petitioners were the first and sole applicants in any Court having jurisdiction of the subject-matter and the parties, for the appointment of a receiver, and that the interests represented by the receiver sought to be appointed through the State Courts of the State of Washington, which was

under an application subsequent to that of your petitioners, are hostile and adverse to the interests of the claimants for labor and material upon the building of the Scandinavian-American Building Company involved in this suit, in that the Deputy Bank Commissioner, operating under and by and with the advice of the State Bank Commissioner of the State of Washington, is seeking to sequester the assets of said building company in the interest of and for the creditors of the Scandinavian-American Bank, both of which corporations are wholly insolvent, and the said Deputy Bank Commissioner is seeking to exclude from participation in said assets the rightful creditors, namely, the lien claimants upon said building, claiming or purporting to claim that all of said assets are the assets of said Scandinavian-American Bank, but that said assets were at all times held out to be, including said building and ground, the assets of said Scandinavian-American Building Company during the entire period from the time of entering into contract for the delivery of materials and finished work upon said building to the day that said claimants were ordered to cease work and delivery of materials to said building, which coincided with the failure of said Scandinavian-American Bank. [34]

4. That the directorate of both corporations just named was during all times in issue identical, and that said directorate is co-operating with the State Banking Department of the State of Washington adversely to the interest of these claimants in an attempt to sequester the assets of said Building

Company, including the said building and all material for its erection delivered upon the ground or elsewhere for its completion, to the interest of said Bank, and that claimants in addition to those represented by complainant herein and these petitioners are asserting what they believe to be valid and rightful claims in excess of One Hundred Thousand (\$100,000.00) Dollars upon this building, and said assets, and that there is grave danger that by the interference and the sale at inadequate price of said assets, as has already occurred, by the State Banking Department, and the deterioration of said building and because of the danger to passersby as illustrated, that there will be further depletion of said assets unless a receiver be appointed to fully and adequately take care of said assets and to properly safeguard the citizens of Tacoma passing said building.

5. That the said State Bank Commissioner and said Deputy Commissioner, acting for him for said insolvent bank, have refused upon request and are now refusing to deliver over for inspection any of the documents such as minute books of said Building Company and correspondence between said Building Company and one Simpson, who was to but failed to supply a loan of Six Hundred Thousand (\$600,000.00) Dollars under a mortgage subsequent to the mortgage of the Penn Mutual Life Insurance Company, which mortgage of Six Hundred Thousand Dollars the said Banking [35] Department now pretends is a valid mortgage in the hands of the Scandinavian-American Bank, but

which in truth and in fact was originally given to said Simpson and upon which nothing was advanced, and which was assigned in the late fall of 1920 to said Bank, as your petitioners are informed, believe and state the fact to be, without consideration, and which was not recorded until the failure of said Scandinavian-American Bank sometime in January of 1921, at which time and not prior thereto these petitioner and the remaining claimants, as these petitioners are informed, believe and state the fact to be, for the first time heard of the claim of said Scandinavian-American Bank to the said mortgage, and it will be necessary to turn over to said receiver under order of this Court, all of the books, papers and correspondence herein referred to.

WHEREFORE, your petitioners respectfully pray for the appointment of a receiver subject to such bond as this Honorable Court may direct.

FLICK & PAUL,

Attorneys for Ann Davis and R. T. Davis, Jr., as
Executors of the Estate of R. T. Davis, Deceased; R. T. Davis, et al., Copartners Doing
Business Under the Name and Style of Tacoma Millwork Supply Co.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Feb. 23, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [36]

**Order Appointing F. P. Haskell, Jr., Receiver of
American-Scandinavian Building Company—
Dated March 23, 1921.**

This matter coming on regularly to be heard upon the application for the appointment of a receiver for the assets of the defendant, Scandinavian-American Building Company, a corporation, which said application was made by the defendants, Ann Davis and R. T. Davis, Jr., executors of the estate of R. T. Davis, deceased, and Ann Davis and R. T. Davis, Jr., et al., copartners, doing business as the Tacoma Millwork Supply Company, the complainant herein appearing by its attorneys, Messrs. Hayden, Langhorne & Metzger, the applicants appearing by their attorneys herein, Messrs. Flick & Paul, and the defendant, Scandinavian-American Building Company being represented by its attorneys, Messrs. Guy E. Kelly and F. D. Oakley, and the attorneys for the complainant and applicants having presented their petition for the appointment of a receiver, and the defendant, Scandinavian-American Building Company, having filed affidavits in resistance thereof, and the Court having considered the same, and being fully advised in the premises,—

And it appearing to the Court that F. P. Haskell, Jr., is a suitable and competent person to act as such receiver,—

IT IS THEREFORE ORDERED, That F. P. Haskell, Jr., be, and he hereby is appointed receiver of the defendant company, and that said re-

ceiver be, and he is hereby authorized and [37] directed to take possession of all of the property and assets of the defendant of every kind and description; that said receiver be, and hereby is authorized and directed to employ such necessary caretakers and assistants as he may deem necessary to protect the property of defendant during receivership; that said receiver file in this action his oath as such receiver in due form of law, and *the* he file a bond as such receiver as required by law for the faithful performance of the duties involved, the amount of which bond shall be in the sum of \$10,000.00, and shall be approved by this Court.

IT IS FURTHER ORDERED, That Guy E. Kelly be, and he hereby is appointed attorney for said receiver.

Done in open court this 23d day of March, 1921.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Mar. 23, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [38]

**Order Making F. P. Haskell, Jr., as Receiver,
Party Defendant—Dated May 21, 1921.**

This cause coming on for hearing upon the motion of Scandinavian-American Building Company, a corporation, one of the above-named defendants, for an order to make Forbes P. Haskell, Jr., the

duly qualified and acting receiver of the Scandinavian-American Building Company, a party defendant to the above-entitled cause, and it appearing to the Court that the said Forbes P. Haskell, Jr., as such receiver, is a necessary party defendant to said action,—

IT IS HEREBY ORDERED that Forbes P. Haskell, Jr., as receiver in possession and charge of the property of the Scandinavian-American Building Company, be and he is hereby made a party defendant to this cause with leave to plead herein.

Dated this 21st day of May, 1921.

EDWARD E. CUSHMAN,

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 21, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [39]

**Order Granting Leave to Sue Receiver—Dated
June 14, 1921.**

It appearing to the Court that, by an order of the said Court, Forbes P. Haskell, was heretofore appointed receiver of the Scandinavian-American Building Company, a corporation, one of the defendants in the above-entitled action, and that by an order made by the above-entitled court on the 21 day of May, 1921, the said receiver was made a party to said action, and was directed to appear and defend all actions or proceedings in said action,

brought by the various holders of liens and encumbrances on the property of the said Scandinavian-American Building Company; and

Whereas it was intended by the said order that the holders of liens and encumbrances on and against the property of the said Scandinavian-American Building Company, involved in the above-entitled action, should have leave and authority of this Court to sue the receiver of the said Scandinavian-American Building Company, for the purpose of foreclosing and enforcing their liens against the property of the said Building Company, and the said order was entered partly for that purpose; and

It appearing to the Court that it would be desirable that the said order should be amended so as to effect the purpose aforesaid, and that an order should be entered to that effect: [40]

NOW, THEREFORE, it is ordered that all persons, and particularly the Far West Clay Company, having claims, demands, liens or encumbrances against the property of the Scandinavian-American Building Company, are hereby authorized and empowered to make Forbes P. Haskell, the receiver thereof, a party to the foreclosure for said liens or encumbrances, in the above-entitled action and to sue the said receiver for the said purpose, and to serve on him the necessary papers, processes, or pleadings, to accomplish said purpose.

This order is hereby made and is to take effect as at the present time, and to relate for this and date back as though it were made on the 21 day of May, 1921.

The receiver of the said Scandinavian-American Building Company, through his attorneys, and McClintic-Marshall Company, a corporation, through its attorneys, having consented to the foregoing order, it is hereby made.

Ordered this 14th day of June, 1921.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 14, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [41]

The undersigned attorneys for McClintic-Marshall Company, complainant in the above-entitled action, and Forbes P. Haskell, receiver of the Scandinavian-American Building Company appearing in the above-entitled action, and his attorneys of record therein,—

Hereby consent to the above and foregoing order of the Court.

McCLINTIC-MARSHALL COMPANY.

By HAYDEN, LANGHORNE & METZGER,

Its Attorneys.

F. P. HASKELL, Jr.,

Receiver of Scandinavian-American Building Company.

F. D. OAKLEY,

KELLY & MacMAHON,

Attorneys for Receiver of the Scandinavian-American Bldg. Co. [42]

Order Permitting Joining of Forbes P. Haskell as Receiver of Scandinavian-American Building Company as Defendant.

On stipulation of Hayden, Langhorne & Metzger, counsel for complainant, and F. D. Oakley and Kelly & MacMahon, attorneys for Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company.

IT IS HEREBY ORDERED that Forbes P. Haskell as receiver of the Scandinavian-American Building Company, be and he is hereby made a party defendant herein, and that paragraph 15 of the amended and supplemental bill of complaint be amended, including therein after the word "Commissioner" in the 3d line of page 5, the following: "Forbes P. Haskell as Receiver of the Scandinavian-American Building Company."

Done in open court this 27th day of June, 1921.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. June 27, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [43]

Answer of Defendants, Scandinavian-American Building Company and Forbes P. Haskell, Jr., Its Receiver.

Now come the defendants Scandinavian-American Building Company, a corporation, one of the defendants above named, and Forbes P. Haskell, Jr., the duly appointed, qualified and acting receiver of the said Scandinavian-American Building Company, by leave of Court first had and obtained to be made a party defendant in this action, and for their answer to complainant's amended and supplemental bill of complaint, specifically admit each and all of the allegations in said amended and supplemental bill of complaint contained, except as hereinafter qualified, or specifically denied. Said admission is intended to be of the same force and effect as if the allegations of the bill were herein repeated at length, save only as the same are herein modified or denied.

I.

Answering paragraph XV these defendants admit that between the 5th day of February 1920, and October 21st, 1920, the complainant delivered to the Scancinavian-American Building Company, a certain part of the structural steel called for in said contract but specifically deny that the value of the steel so furnished was of the sum of \$263,437.54, or any other sum in excess of \$260,000.00, and allege that the Scandinavian-American Building Company paid to said complainant the sum of \$87,814.34 to be applied on the purchase price of said

structural steel. These defendants deny that the structural steel called for in said contract was delivered to the Scandinavian-American Building Company in accordance with terms of said contract, and allege [44] that a part of the structural steel furnished and delivered was defectively fabricated and could not be used in the construction of the said building without many changes and alterations, which changes and alterations were made by the Scandinavian-American Building Company at a great expense to it.

That defendants further allege that by reason of the failure and refusal of the complainant to deliver the structural steel in accordance with the terms of said contract, and within the period provided in said contract for the delivery of said steel, the said Scandinavian-American Building Company suffered great loss and damage and that by the terms of Article X of the Contract marked Exhibit "A," and made a part of complainant's amended and supplemental bill of complaint, the above matters in dispute were to be arbitrated according to the method provided in said Article X, and that the defendant, Scandinavian-American Building Company, demand that said matters in dispute be submitted to arbitration, and that the complainant refused so to do, by reason whereof these defendants deny that the complainant is entitled to recover any sum of money whatever from these defendants until the terms and conditions of said contract are fully complied with, and these defendants specifically deny that *that* there is now

due to the complainant, for material so furnished to the Scandinavian-American Building Company, in accordance with the terms of said contract, the sum of \$176,632.37, with interest at the rate of 6% per annum on \$45,820.66 from September 20, 1920, on \$95,501.00 from October 20, 1920, on \$31,842.94 from November 20, 1920, and on \$3,465.76 from December 20, 1920, or any other sum or sums whatsoever. [45]

II.

These defendants answering paragraph XVII of complainant's amended and supplemental bill of complaint admit that the complainant filed, or caused to be filed and recorded with the County Auditor of Pierce County, Washington, a claim of lien, but these defendants specifically deny that on the date of the filing of said claim of lien, to wit, the 24th day of December, 1920, there was due from the Scandinavian-American Building Company to said complainant, the sum of \$176,632.37 with interest from the dates, and on the amounts as specified in the amended bill of complaint, or any other sum, or sums, whatever, and allege that at the time of filing said lien, the said complainant was without right or authority in law to claim, or to file or record, any lien whatsoever against the said premises of the defendant, Scandinavian-American Building Company.

III.

These defendants for answer to paragraph XVIII of complainant's amended and supplemental bill of complaint, admit that the various

persons, firms and corporations mentioned in said paragraph claim to have some right, title, lien or interest in, or to said premises, but these defendants deny that any one of said persons, firms or corporations have any right, title, lien or interest in, or to said premises, and require strict proof thereof.

IV.

These defendants answering paragraph XIX of said complainant's amended and supplemental bill of complaint deny that the complainant is entitled to an allowance of a reasonable attorneys fee herein, or of any attorneys fee whatsoever, [46] and specifically deny that a reasonable attorneys fee in the premises is in the sum of \$15,000.00, or in any other sum whatsoever.

V.

These defendants further answering, allege that the amended and supplemental bill of complaint shows that the lien claimed by the complainant herein is claimed to exist under and by virtue of Section 1134 of Remington's Code and Statutes of the State of Washington, and these defendants say that under and by virtue of said Codes and Statutes of said State, there can be maintained but one cause of action for the foreclosure of any lien or liens upon the building in controversy in this suit. That there are many lien claimants whose claims against the defendant Scandinavian-American Building Company, are less than the sum of \$3,000.00 and that by reason thereof this court

has no jurisdiction to determine the matter in controversy.

And the defendants, Scandinavian-American Building Company and Forbes P. Haskell, Jr., the duly appointed, qualified and acting Receiver thereof, without conceding or admitting the jurisdiction of this Court to hear and determine the amended and supplemental bill of complaint, but specifically denying the same, and also without conceding the right or authority in law or equity, on the part of the complainant to maintain its cause of action against these defendants, or either of them, by reason of the failure and refusal of the said complainant to arbitrate the matter in dispute, as provided for in Article X of Exhibit "A," attached to complainant's amended and supplemental bill of complaint, and made a part thereof, but specifically denying the same, by way of [47] counterclaim and further answer, alleges as follows:

I.

That under the terms of the written contract entered into between the complainant and the defendant, Scandinavian-American Building Company, a copy of which is marked Exhibit "A" and made a part of the amended and supplemental bill of complaint herein, the complainant undertook and agreed to begin shipment of the structural steel specified in said contract within sixty days from the date thereof, to wit: February 5th, 1920, and to make complete shipments of said material within one hundred and twenty days after said date.

That the said complainant failed and refused to make shipments of said material according to the terms of said contract and willfully delayed shipment thereof for a period of five months after the time the shipment should have been completed. That during the month of September, 1920, the freight rates on said material greatly increased and by reason thereof, the Scandinavian-American Building Company was compelled to pay, and did pay, an excess in freight rates, over that which they would have been compelled to pay had the complainant shipped the steel within the time provided in said contract, in the sum of \$14,052.76.

II.

That the said steel when delivered was not fabricated according to the plans and specifications agreed upon by the parties to said contract, and that it was necessary for the said Scandinavian-American Building Company to make alterations and changes in said steel in order to make the same comply with the said plans and specifications, all [48] to the cost and damage of the Scandinavian-American Building Company in the sum of \$3,000.00.

III.

That on account of the failure and refusal of the complainant to furnish said structural steel within the time limit provided for said delivery, in said contract, the said Scandinavian-American Building Company sustained a great loss in rentals and in interest on capital invested, to wit, the sum of \$50,000.00, and that by reason of the said breach

of said contract, as herein set forth, the defendant Scandinavian-American Building Company sustained loss and damages in the sum of \$67,052.76. That the said defendant made repeated demands for adjustment and arbitration of the said matters in dispute, and that the complainant failed and refused, and still fails and refuses to submit the same to arbitration.

WHEREFORE these defendants pray that said amended and supplemental bill of complaint be dismissed and that these defendants have judgment for their costs, attorney fees and disbursements in this action, and that such further relief be granted them as to the Court may seem just.

GUY E. KELLY,
THOS. MacMAHON,
F. D. OAKLEY,

Attorneys for Said Defendants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 23, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [49]

**Motion of McClintic-Marshall Company to Strike
Part of Answer of Scandinavian-American
Bank of Tacoma et al.**

Comes now McClintic-Marshall Company, a corporation, complainant in the above-entitled action, and moves this Court for an order as follows:

I.

For an order striking paragraph I of the affirmative defense as contained in the answer of Scandinavian-American Bank of Tacoma, a corporation, and J. P. Duke, as supervisor of banks of the state of Washington, which paragraph reads as follows:

“The cross-complainants submit to the judgment of this Honorable Court, and insist that this suit is altogether unnecessary and vexatious and that, even if the plaintiff be entitled to the sum alleged by it to be due from said defendant, the Scandinavian-American Building Company, the complainant herein is barred from asserting such rights in this action under Article X of the contract, marked Exhibit ‘A’ and attached to its amended and supplemental bill of complaint herein, for the reason that the claims of the complainant are now and have at all times been disputed and that the complainant herein has repeatedly refused to abide by the terms of said contract, and particularly by the terms of said Article X, and submit such disputes to arbitration, as therein provided, and that the complainant herein, by reason thereof and by reason of its breaches of said contract referred to in its amended and supplemental bill of complaint herein, has not done equity, and has not come into this court with clean hands, and it is entitled to no equity at the hands of this court.” [50]

This motion to strike is based on the ground that

the matter moved against does not constitute a defense to this action.

HAYDEN, LANGHORNE & METZGER,
Attorneys for Complainant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 24, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [51]

Order Granting Motion of McClintic-Marshall Company to Strike Part of Answer of Scandinavian-American Building Company et al.

Came on this cause to be heard on the motion of McClintic-Marshall Company, a corporation, complainant, to strike certain portions of paragraphs 1 and 2 and all of paragraph 5 of the answer and to strike paragraphs 1 and 3 of the counterclaim as contained in the answer of Scandinavian-American Building Company, a corporation, and Forbes P. Haskell, Jr., receiver of the Scandinavian-American Building Company; Hayden, Langhorne & Metzger appearing on behalf of the complainant and in support of the motion and Frank D. Oakley and Kelly & MacMahon appearing on behalf of the Scandinavian-American Building Company, a corporation, and Forbes P. Haskell, Jr., receiver of the Scandinavian-American Building Company, in opposition thereto.

After argument of the counsel and the submission of briefs, the Court not being duly advised in the

premises, took said motion under consideration until a later date.

NOW, on this — day of June, 1921, the Court being duly advised in the premises,—

IT IS ORDERED, ADJUDGED AND DECREED that all of that portion of paragraph 1 of the answer which reads as follows:

“These defendants further allege that by reason of the failure and refusal of the complainant to deliver the structural steel in accordance with [52] the terms of said contract, and within the period provided in said contract for the delivery of said steel, the said Scandinavian-American Building Company suffered great loss and damage and that by the terms of Article X of the Contract, marked Exhibit ‘A’ and made a part of the complainant’s amended and Supplemental Bill of Complaint the above matters in dispute were to be arbitrated according to the method provided in said Article X and that the defendant, Scandinavian-American Building Company, demanded that said matters in dispute be submitted to arbitration, and that complainant refused so to do, by reason whereof these defendants deny that the complainant is entitled to recover any sum of money whatever from these defendants until the terms and conditions of said contract are fully complied with.”

be and the same is hereby stricken and that all that portion of paragraph 2 of the answer which reads as follows:

“and allege that at the time of filing said lien, the said complainant was without right or authority in law to claim, or to file or record, any lien whatsoever against the said premises of the defendant, Scandinavian-American Building Company.”

be and the same is hereby stricken; and that all of paragraph 5 of the answer be and the same is hereby stricken, and that all of paragraph 3 of the counterclaim be and the same is hereby stricken, excepting the motion to strike paragraph 1 of the counterclaim is hereby denied and overruled.

To the action of the Court in striking the portions of the answer and counterclaim moved against the defendants Scandinavian-American Building Company, a corporation, and Forbes P. Haskell, Jr., receiver of the Scandinavian-American Building Company, by its attorneys duly excepted and that exception is allowed.

To the action of the Court in refusing to strike all of paragraph 1 of the counterclaim the complainant duly excepted and its exception is allowed.

Done in open court this 27th day of June, 1921.

EDWARD E. CUSHMAN,

Judge. [53]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 27, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [54]

Reply to Answer of Scandinavian-American Building Company and Forbes P. Haskell, Its Receiver.

Comes now McClintic-Marshall Company, a corporation, complainant in the above-entitled action, and for reply to so much of the answer of the Scandinavian-American Building Company and Forbes P. Haskell as it is advised it is necessary and material for it to reply to, says:

I.

For reply to that part of paragraph I which alleges that the structural steel furnished and delivered by complainant to the Scandinavian-American Building Company was defectively fabricated and could not be used in the construction of the building without many changes, this complainant says that it denies each and every of said allegations and charges and the whole thereof.

The complainant for its reply to the counterclaim as contained in the answer of the Scandinavian-American Building Company and Forbes P. Haskell, its receiver, says:

I.

It admits that under the terms of the written contract entered into between this complainant and the defendant Scandinavian-American Building Company the complainant undertook [55] and agreed to begin shipment of the structural steel which it was to furnish to the Building Company within 60 days from February 5, 1920, and it also agreed to make complete shipments of all material

called for in said contract within 120 days after the date of said contract, but it was also provided in said contract that complainant's undertaking to commence shipment of the structural steel within 60 days after February 5, 1920, and to complete the same within 120 days from said February 5, 1920, was conditioned upon the Scandinavian-American Building Company within five days after the date of said agreement, to wit, within five days after February 5, 1920, furnishing complainant with plans and specifications and all data required for the manufacture of the fabricated steel required by the Building Company, which plans, specifications and data were to be furnished the complainant by Frederick Webber, architect, for the construction of the building that was in process of erection by defendant Scandinavian-American Building Company, and this complainant alleges and avers that said Scandinavian-American Building Company did not, within five days after February 5, 1920, or for a long time thereafter, furnish this complainant with the required data for the manufacture of the fabricated steel that complainant was required to furnish to said Building Company, and any and all delay in commencing to ship or in completing the shipment of the structural steel work to defendant Scandinavian-American Building Company was due to the fault and neglect of the said Building Company, its officers and agents, to comply with the provisions of the contract of February 5, 1920, in furnishing to complainant the data required for the structural steel work that it [56] desired to make use of in

the construction of its building in Tacoma, Washington.

And complainant further alleges and avers the fact to be that if the Scandinavian-American Building Company was, on account of the delay in shipping the structural steel work, compelled to pay the sum of \$14,052.76 in freight rates in excess of what it would have been compelled to pay had the structural steel work been all shipped within 120 days after February 5, 1920, such excess payment was wholly due to the fault and neglect of the said Scandinavian-American Building Company in failing to observe that provision of the contract requiring it to furnish to complainant within five days after February 5, 1920, the required data for the manufacture of the structural steel work, but as to whether or not the said Scandinavian-American Building Company was compelled to pay the sum mentioned on account of the advance in freight rates, this complainant has no knowledge or information sufficient to form a belief and demands strict proof thereof.

Further replying to said paragraph your complainant alleges and avers the fact to be that it is provided in and by said contract that this complainant would ship all the material mentioned and described in said contract within 120 days after February 5, 1920, provided that it was not obstructed or delayed "by any act, neglect or default of the purchaser or their employees or agents, or by the Rolling Mills, transportation, strikes, fires, storms, floods or other causes beyond the reasonable

control of the contractor.” And complainant alleges that in addition to the reason heretofore given as to why it did not ship all of the structural [56½] steel work within 120 days after February 5, 1920, it was also delayed in the shipment of said structural steel work by reason of the strike among the employees of all the railroad companies centering in and running out of Pittsburgh, Pennsylvania, and the state of Pennsylvania, which strike of said employees extended over a period of sixty days and it was impossible during the period of the strike of the employees of the railroad or railway companies to make any shipments and was a cause that was beyond the control of this complainant.

II.

For reply to the second paragraph of the counterclaim this complainant says that it denies the same and the whole thereof and each and every allegation therein contained, and denies that by reason of any of the matters and things alleged in said paragraph Scandinavian-American Building Company was damaged in the sum of \$3000, or in any other sum or sums whatsoever.

WHEREFORE, having made a full reply to the answer and counterclaim of the said Scandinavian-American Building Company and Forbes P. Haskell, its receiver, this complainant prays for a decree in conformity with the prayer of its amended and supplemental complaint.

E. M. HAYDEN,
M. A. LANGHORNE,
F. D. METZGER,

Solicitors for Complainant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 1, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [57]

Answer and Cross-complaint of J. P. Duke and Scandinavian-American Bank of Tacoma. [58]

The defendants, Scandinavian-American Bank of Tacoma, a corporation, and J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendant, Claude P. Hay, as State Bank Commissioner for the State of Washington, in answer to the amended and supplemental bill of complaint of the McClintic-Marshall Company, a corporation, aver:

I.

That the statements contained in the paragraphs numbered respectively I, IV, V, VII, VIII, IX, X, XI, XII, XIII and XX are true, as this cross-complainant is informed and believes.

II.

That these cross-complainants have no personal knowledge of the contract marked Exhibit "A" attached to the amended and supplemental bill of complaint herein, and, for greater certainty, crave leave to refer to the said contract when produced.

III.

These cross-complainants deny that the complainant herein, McClintic-Marshall Company, delivered to the Scandinavian-American Building Company the structural steel called for in said

contract in accordance with the terms of said contract, and deny that there is due from the Scandinavian-American Building Company in accordance with the terms of said contract the sum of \$175,-632.37, with interest, or any other sum whatsoever, and demand strict proof thereof, and deny that the complainant herein, McClintic-Marshall Company, has any lien whatsoever upon the real property described in said amended and supplemental bill of complaint and in said Exhibit "B" attached to said amended and supplemental bill of complaint, and deny that the rights, liens and interests in or to said property now vested in J. P. Duke, as Supervisor of Banks of the State of Washington, are junior, subsequent or inferior to the lien of the complainant or any other firm, corporation or individual whatsoever, and deny that the sum of \$15,000.00, or any other sum whatsoever, should be allowed to the complainant as attorney's fees herein.

By way of defense against the amended and supplemental bill of complaint of the plaintiff herein,

I.

The cross-complainants submit to the judgment of this Honorable Court, and insist that this suit is altogether unnecessary and vexatious and that, even if the plaintiff be entitled to the sum alleged by it to be due from said defendant, the Scandinavian-American Building Company, the complainant herein is barred from asserting such rights in this action under Article X of the contract, marked Exhibit "A" and attached to its amended and

supplemental bill of complaint herein, for the reason that the claims of the complainant are now and have at all times been disputed and that the complainant herein has repeatedly refused to abide by the terms of said contract, and particularly by the terms of said Article X, and submit such disputes to arbitration, as therein provided, and that the complainant herein, by reason thereof and by reason of its breaches of the said contract referred to in its amended and supplemental bill of complaint herein, has not done equity, and has not come into this court with clean hands, and it is entitled to no equity at the hands of this Court.

The Scandinavian-American Bank of Tacoma and J. P. Duke, as Supervisor of Banks of the State of Washington in charge of the liquidation of the Scandinavian-American Bank of Tacoma, by way of cross-bill herein against the plaintiff, McClintic-Marshall Company, a corporation, and by way of a bill of complaint against F. P. Haskill, Jr., as Receiver of the Scandinavian-American Building Company, a corporation; Ann Davis and R. T. Davis, Jr., as executors of the estate of R. A. Davis, deceased; R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company; G. Wallace Simpson; Savage-Seofield Company, a corporation; Puget Sound Iron & Steel Works, a corporation; E. E. Davis & Company, a corporation; St. Paul & Tacoma Lumber Company, a corporation; Far West

Clay Company, a corporation; Henry Mohr Hardware Co., Inc., a corporation; Hunt & Mottet Company, a corporation; Edward Miller Cornice & Roofing Company, a corporation; Washington Brick, Lime & Sewer Company, a corporation; Otis Elevator Company, a corporation; U. S. Machine & Engineering Co., Inc., a corporation; Colby Star Manufacturing Company, a corporation; Tacoma Shipbuilding Company, a corporation; Crane Company, a corporation; Ben Olson Company, a corporation; H. C. Greene, doing business as H. C. Greene Iron Works; Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company; S. O. Matthews and Frank L. Jones, copartners doing business under the firm name and style of City Lumber Agency; J. D. Mullins, doing business as J. D. Mullins Bros.; S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company; M. Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore [59] Hedlund, doing business as Atlas Paint Company; F. H. Madsen and Gustaf Jonason, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed. Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swan-

son, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, George W. Hicks, Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal; Sherman Wells, Carl J. Gerring, George Gerring, F. R. Schoen, Adolph W. Aufang, C. H. Boedecker, William L. Owens, F. H. Godfrey, W. T. Morris, Samuel Rothstein and Frederick Webber, aver:

I.

That prior to the 15th day of January, 1921, the Scandinavian-American Bank of Tacoma was a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business at Tacoma, Washington, and authorized under such laws to do a general banking business in the City of Tacoma, and State of Washington, and was engaged in the conduct of such business; that on the 15th day of January, 1921, the said Scandinavian-American Bank of Tacoma was adjudged to be insolvent, and its assets and affairs thereby came into the possession of Claud P. Hay, as State Bank Commissioner for the State of Washington, for liquidation, and remained in the hands of the said Claude P. Hay, as such Commissioner, and in course of liquidation until the 1st day of April, 1921, when the assets and affairs of the said insolvent banking corporation came into the hands of cross-complainant, J. P. Duke, as Supervisor of Banks of the State of Washington, for liquidation.

II.

That since the said 1st day of April, 1921, said cross-complainant has been and now is the Supervisor of Banks of the State of Washington, and as such has been and now is in charge of the liquidation of the Scandinavian-American Bank of Tacoma, an insolvent banking corporation, and as such and for such purpose is authorized and empowered under the laws of the State of Washington to reduce the assets of the said insolvent banking corporation to cash, and to maintain actions in his own name for such purpose.

III.

That the defendant Scandinavian-American Building Company is a corporation organized and existing under the laws of the State of Washington, and a citizen of said state, and a resident of the southern division of the Western District of Washington; that on February 15, 1921, in the above-entitled action, F. P. Haskell was appointed receiver of such corporation, and has duly qualified as such and is now duly acting as such.

IV.

That the defendant Scandinavian-American Bank of Tacoma is a corporation organized and existing under the laws of the State of Washington, and a citizen of said state, and a resident of the southern division of the Western District of the State of Washington.

V.

On information and belief the defendants Ann Davis and R. T. Davis, Jr., as executors of the

estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis constitute a copartnership, doing business in Tacoma, Washington, under the name and style of Tacoma Millwork Supply Company, and all of said named defendants, with the exception of Hattie Davis Tennant, are citizens of the State of Washington, and the said Hattie Davis Tennant is a citizen of the State of California.

VI.

On information and belief the defendant G. Wallace Simpson is a citizen of the State of Pennsylvania.

VII.

That the defendant Frederick Webber is a citizen and resident of the State of Pennsylvania.

VIII.

On information and belief the defendants Savage-Seofield Company, Puget Sound Iron & Steel Works, E. E. Davis & Company, St. Paul and Tacoma Lumber Company, Far West Clay Company, Henry Mohr Hardware Company, Inc., Hunt & Mottet, Edward Miller Cornice [60] & Roofing Company, Washington Brick, Lime & Sewer Company, United States Machine & Engineering Company, Colby Star Manufacturing Company, Tacoma Shipbuilding Company and Ben Olson Company are all corporations organized and existing under the laws of the State of Washington and citizens of said state.

IX.

On information and belief Otis Elevator Company is a corporation, duly organized and existing under and by virtue of the laws of the State of New Jersey and a citizen of said state, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of the State of Washington relative to foreign corporations.

X.

On information and belief the defendant Crane Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Illinois and a citizen of said state, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of said State of Washington relative to foreign corporations.

XI.

On information and belief the defendant H. C. Greene, doing business as H. C. Greene Iron Works, the defendant J. D. Mullins, doing business as J. D. Mullins Bros., S. O. Matthews and Frank L. Johns, a copartnership doing business under the name of City Lumber Agency, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner doing business as

Liberty Lumber & Fuel Company, J. A. Soderberg doing business as West Coast Monumental Company, Theodore Hedlund doing business as the Atlas Paint Company, are all citizens of the State of Washington and residents of the southern division of the Western District of Washington.

XII.

On information and belief the defendants F. W. Madson, Gustaf Jonasson, N. A. Hanson, A. J. Van-Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazala, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed. Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, Sherman Wells, Carl G. Gerring, George Gerring, F. R. Schoen, A. W. Aufang, C. H. Broedecker, William L. Owens, F. H. Godfrey and W. E. Morris, and Samuel Rothstein, are each and every one of them citizens of the State of Washington and residents of the southern division of the Western District of Washington.

XIII.

Further, cross-complaints aver that the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of \$3,000.00

XIV.

That on September 2d, 1910, J. E. Chilberg and Anna M. Chilberg, his wife, were the owners of cer-

tain real property in Pierce County, Washington, described as lots 11 and 12, in block 1003, in the City of Tacoma, and shown and designated upon that certain plat entitled "Map of New Tacoma, Washington Territory," which plat was filed for record in the office of the Auditor of said Pierce County, Washington, on February 3, 1875; that on said date, the said J. E. Chilberg and Anna Chilberg, for a valuable consideration, and in order to secure the payment of the principal and interest of a promissory note in the sum of \$100,000.00 then made and delivered, when the same should become due and payable, and to secure the performance and observance of all the covenants and agreements and conditions on the part of the said J. E. Chilberg and Anna M. Chilberg, his wife, contained in the mortgage hereinafter mentioned, made, executed and delivered to the Penn Mutual Life Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, a mortgage wherein and whereby they mortgaged to the said Penn Mutual Life Insurance Company the real estate situated in Pierce County, State of Washington, above described.

XV.

That a true copy of said mortgage so made, executed and delivered to the said Penn Mutual Life Insurance Company, is attached to this cross-bill of complaint and marked Exhibit "W" and cross-complainants pray that this said copy marked Exhibit "W" shall be taken in all respects as if it were

fully and specifically set forth in the body of this cross bill of complaint. [61]

XVI.

That the said mortgage was duly filed for record in the office of the Auditor of Pierce County, Washington, on September 23d, 1910, at 3:46 P. M., and was recorded in book 165 of Record of Mortgages, Pierce County, Washington, on page 452.

XVII.

That on October 27th, 1915, the said J. E. Chilberg and Anna M. Chilberg, his wife, and the said "The Penn Mutual Life Insurance Company," a corporation, in the due exercise of the powers and authority by it in that behalf possessed, made and entered into an agreement for the extension of time of payment of the said mortgage, above described, and referred to herein as Exhibit "W," wherein and whereby it was agreed that the time for the payment of the said principal sum of \$100,000.00 should be due and payable as follows:

\$10,000.00 on September 1st, 1916;

10,000.00 on September 1st, 1917;

5,000.00 on September 1st, 1918;

5,000.00 on September 1st, 1919;

70,000.00 on September 1st, 1920;

with interest at the rate of five and one-half per cent ($5\frac{1}{2}\%$) per annum from September 1st, 1915, until maturity, and at twelve per cent (12%) per annum from maturity until paid; which said agreement was duly filed for record in the office of the Auditor of Pierce County, Washington, on No-

vember 15th, 1915, at 2:35 P. M., and is of record in the office of the said Auditor.

XVIII.

That on the 2d day of March, 1921, the said Penn Mutual Life Insurance Company, a corporation, in the exercise of the powers and authority by it in that behalf possessed, and for a valuable consideration, endorsed the said note and sold, assigned and transferred the mortgage above described and referred to herein as Exhibit "W" to the cross-complainant, J. P. Duke, as such Supervisor of Banks, and he is now the owner and holder thereof.

XIX.

That the principal of the said mortgage with interest, according to the terms thereof, and according to the agreement of extension of time hereinabove referred to, is now due and that there is now due and payable on the said note and mortgage the sum of \$70,000.00 and interest thereon at the rate of 12 per cent per annum from September 1st, 1920, until paid.

XX.

That the said note and mortgage expressly provide that any moneys paid by the mortgagee for the certifications to date of the abstracts of title and tax histories of the mortgaged premises, in case of default should be a further lien on the said premises under said mortgage, and that this plaintiff has expended the sum of \$150.00 for certificates to date of the abstracts of title and tax histories of said mortgaged premises.

XXI.

That in said note and mortgage it is expressly agreed that, in case any action or proceeding is brought upon said note or to foreclose said mortgage, the mortgagee shall be entitled to an attorney's fee therein equal to ten per cent of the amount due and that such attorney's fees shall be a lien upon said land secured by said mortgage; the cross-complainants aver that the sum of \$7,000.00 is a reasonable attorney's fee to be allowed him in this said matter.

XXII.

That no proceedings have been had in law or otherwise, and that no other action is being brought for the recovery of the said sum secured by said note and mortgage or for the recovery of the said mortgage debt, or any part thereof.

XXIII.

This cross-complainant further shows, upon information and belief that the defendants, F. P. Haskell, Jr., as receiver of the Scandinavian-American Building Company, a corporation; Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased; R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tenant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Company; G. Wallace Simpson; Savage-Scofield Company, a corporation; Puget Sound Iron & Steel Works, a corporation; E. E. Davis & Company, a corporation; St. Paul & Tacoma Lumber Company, a corporation; Far West Clay Company, a corpora-

tion; Henry Mohr Hardware Company, Inc., a corporation; Hunt & Mottet [62] Company, a corporation; Edward Miller Cornice & Roofing Company, a corporation; Washington Brick, Lime & Sewer Company, a corporation; Otis Elevator Company, a corporation; U. S. Machine & Engineering Company, Inc., a corporation; Colby Star Manufacturing Company, a corporation; Tacoma Shipbuilding Company, a corporation; Crane Company, a corporation; Ben Olson Company, a corporation; H. C. Greene, doing business as H. C. Greene Iron Works; Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company; S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency; J. D. Mullins doing business as J. D. Mullins Bros.; S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company; M. Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore Hedlund, doing business as Atlas Paint Company; F. H. Madsen and Gustaf Jonason, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William

Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, George W. Hicks, Robert W. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal; Sherman Wells, Carl J. Gerring, George Gerring, F. R. Schoen, Adolph W. Aufang, C. H. Boedecker, William L. Owens, F. H. Godfrey, W. E. Morris, Frederick Webber, and Samuel Rothstein, have, or claim to have, some interest in or claim upon the said mortgaged premises, or some part thereof, but cross-complainants aver that the interest of the said defendants, if any, is inferior, subject and subsequent to the lien of cross-complainants by virtue of the said note and mortgage hereinabove set forth.

And the said Scandinavian-American Bank of Tacoma and J. P. Duke as Supervisor of Banks of the State of Washington, as a second cross-bill of complaint against the plaintiff herein, and against the defendants, F. P. Haskell, Jr., as receiver of the Scandinavian-American Building Company, a corporation; Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased; R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company; G. Wallace Simpson; Savage-Scofield Company, a corporation; Puget Sound Iron & Steel Works, a corporation; E. E. Davis & Company, a corporation; St. Paul & Tacoma Lumber Company, a corporation; Far

West Clay Company, a corporation; Henry Mohr Hardware Company, Inc., a corporation; Hunt & Mottet Company, a corporation; Edward Miller Cornice & Roofing Company, a corporation; Washington Brick, Lime & Sewer Company, a corporation; Otis Elevator Company, a corporation; U. S. Machine & Engineering Company, a corporation; Colby Star Manufacturing Company, a corporation; Tacoma Shipbuilding Company, a corporation; Crane Company, a corporation; Ben Olson Company, a corporation; H. C. Greene, doing business as H. C. Greene Iron Works; Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company; S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency; J. D. Mullins doing business as J. D. Mullins Bros.; S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company; M. Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore Hedlund, doing business as Atlas Paint Company; F. H. Madsen and Gustaf Jonason, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcel-

lino, M. Swanson, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Petterly, Thomas S. Short, George W. Hicks, and Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal; Sherman Wells, Carl J. Gerring, George Gerring, F. R. Schoen, Adolph W. Aufang, C. H. Boedecker, Williams L. Owens, Frederick Webber, F. H. Godfrey, W. E. Morris and Samuel Rothstein aver:

I.

These cross-complainants reallege the allegations contained in paragraphs I to XIII, inclusive, as set forth in his first bill of complaint hereinabove, and make the same a part of this, the second cross-bill of complaint herein, as fully and to all intents and purposes as though the same were set forth herein verbatim.

II.

That prior to November 10th, 1919, lot 10, block 1003, as the same is known and designated upon a certain plat entitled "Map of Tacoma, W. T.," filed for record with the Auditor of Pierce County, Washington, on February 3d, 1875, was in "Drury, the Tailor, Incorporated," a corporation organized and existing under and by virtue of the laws of the State of Washington; and that on said date the said Scandinavian-American Bank of Tacoma, at the instance [63] and request of the Scandinavian-American Building Company, and in consideration of the contract hereinafter referred to, paid to the said corporation, "Drury, the Tailor, Incor-

porated," the sum of \$65,000.00, and in consideration thereof the said corporation, "Drury, the Tailor, Incorporated," deeded the said lot to the Scandinavian-American Building Company; that at such time the title to lots 11 and 12 in block 1003, "Map of New Tacoma, W. T.," was in the said Scandinavian-American Bank of Tacoma, a corporation, and the said Scandinavian-American Bank of Tacoma, on February 25th, 1920, deeded the said lots 11 and 12, block 1003, to the said Scandinavian-American Building Company, a corporation, in consideration of the agreement of the said Scandinavian-American Building Company, a corporation, to deliver to the said Scandinavian-American Bank of Tacoma bonds of the par value of \$350,000.00, bearing interest at the rate of 6% per annum, payable semi-annually, and secured by a second mortgage upon lots 10, 11 and 12, block 1003, "Map of New Tacoma, W. T.," situated in Pierce County, Washington; that it was a part of the second agreement that said mortgage bonds should be delivered to the said Scandinavian-American Bank of Tacoma, within a period of four months from the 10th day of February, 1920, and that the said Scandinavian-American Building Company should finance the erection of a sixteen-story building and provide the ground floor thereof with space and accommodation for a metropolitan banking institution, which space was reserved for the use of the Scandinavian-American Bank of Tacoma, upon a rental to be thereafter agreed upon, and that for the purpose of financing the construction and erection of

the said building a first mortgage in the sum of \$600,000.00 should be executed by the said Scandinavian-American Building Company upon all three lots, which said mortgage should be executed and recorded before actual construction should begin and before any of the contracts for such construction should have been let, and a series of second mortgage bonds of the total par value of \$750,000.00 should be executed and secured by a second mortgage on the said premises, of which bonds, bonds of the par value of \$350,000.00 should be delivered, as above set forth, which said agreement was in writing, and that a true copy of said agreement is annexed to this cross-bill of complaint and marked Exhibit "X," and these cross-complainants pray leave that the said copy marked Exhibit "X" may be taken in all respects as if it were fully and specifically set forth in the body of this second cross-bill of complaint.

III.

That the said Scandinavian-American Building Company never in fact executed the second mortgage which it agreed to execute under the terms of the said agreement attached hereto and marked Exhibit "X," nor did it ever issue and deliver the bonds therein provided for, and that such agreement was not put of record in the office of the Auditor of Pierce County, Washington, in reliance upon the agreements of the contractors furnishing labor and material upon such building whereby the right to file liens thereon was waived.

IV.

That said Scandinavian-American Bank of Tacoma, by virtue of the premises and by virtue of the transfer to the Scandinavian-American Building Company of the real property above described, is entitled in equity to a lien in the nature of a purchase money mortgage on said premises in accordance with the terms of said agreement attached hereto and marked Exhibit "X."

V.

That no other proceeding at law or otherwise has been brought for the establishment of said lien or the foreclosure thereof.

VI.

That the cross-complainant further shows upon information and belief that the plaintiff, McClintic-Marshall Company, a corporation, and the defendants, F. P. Haskell as receiver of the Scandinavian-American Building Company, a corporation; Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased; R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company; G. Wallace Simpson; Savage-Scofield Company, a corporation; Puget Sound Iron & Steel Works, a corporation; E. E. Davis & Company, a corporation; St. Paul & Tacoma Lumber Company, a corporation; Far West Clay Company, a corporation; Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet

Company, a corporation; Edward Miller Cornice & Roofing Company, a corporation; Washington Brick, Lime & Sewer Company, a corporation; Otis Elevator Company, a corporation; U. S. Machine & Engineering Company, a corporation; Colby Star Manufacturing Company, a corporation; Tacoma Shipbuilding Company, a corporation; Crane Company, a corporation; Ben Olson Company, a corporation; H. C. Greene, doing business as H. C. Greene Iron Works; Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company; S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency; J. D. Mullins, doing business as J. D. Mullins Bros.; S. J. Pritchard and C. H. Graves, copartners [64] doing business as P. & G. Lumber Company; M. Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore Hedlund, doing business as Atlas Paint Company; F. H. Madsen and Gustaf Jonason, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcelino, M. Swanson, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whit-

ford, F. A. Fetterly, Thomas S. Short, George W. Hicks and Robert M. Davis and Frank C. Neal, co-partners doing business under the firm name and style of Davis & Neal; Sherman Wells, Carl J. Gerring, George Gerring, F. R. Shoen, Adolph W. Aufang, C. H. Boedecker, William L. Owens, F. H. Godfrey, W. E. Morris, Frederick Webber, and Samuel Rothstein have, or claim to have, some interest in, or lien upon the said mortgaged premises or some part thereof; but cross-complainants aver that the interest of each of said defendants, if any, is inferior, subject and subsequent to the lien of the cross-complainants by virtue of the premises as above set forth.

And the said Scandinavian-American Bank of Tacoma and James P. Duke as Supervisor of Banks of the State of Washington, as a third cross-bill of complaint against the plaintiff herein, and against the defendants, F. P. Haskell as receiver of the Scandinavian-American Building Company, a corporation; Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased; R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, co-partners doing business under the name and style of Tacoma Millwork Supply Company; G. Wallace Simpson; Savage-Scofield Company, a corporation; Puget Sound Iron & Steel Works, a corporation; E. E. Davis & Company, a corporation; St. Paul & Tacoma Lumber Company, a corporation; Far West Clay Company, a corporation; Henry Mohr Hardware Company, Inc., a corporation; Hunt &

Mottet Company, a corporation; Edward Miller Cornice & Roofing Company, a corporation; Washington Brick, Lime & Sewer Company, a corporation; Otis Elevator Company, a corporation; U. S. Machine & Engineering Company, a corporation; Colby Star Manufacturing Company, a corporation; Tacoma Shipbuilding Company, a corporation; Crane Company, a corporation; Ben Olson Company, a corporation; H. C. Greene, doing business as H. C. Greene Iron Works; Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company; S. O. Matthews and Frank L. Jones, copartners doing business under the firm name and style of City Lumber Agency; J. D. Mullins, doing business as J. D. Mullins Bros.; S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company; M. Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore Hedlund, doing business as Atlas Paint Company; F. H. Madsen and Gustaf Jonason, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A.

Fetterly, Thomas S. Short, George W. Hicks, Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal; Sherman Wells, Carl J. Gerring, George Gerring, F. R. Schoen, Adolph W. Aufang, C. H. Boedecker, William L. Owens, Frederick Webber, F. H. Godfrey, W. E. Morris, and Samuel Rothstein aver:

I.

These cross-complainants reallege the allegations contained in paragraphs I to XIII, inclusive, as set forth in the first bill of complaint hereinabove, and makes the same part of this, the third cross-bill of complaint herein, as fully and to all intents and purposes as though the same were set forth herein verbatim.

II.

That pursuant to the said agreement attached hereto and marked Exhibit "X" the said Scandinavian-American Building Company obtained from the Metropolitan Life Insurance Company of New York an agreement to lend \$600,000.00 upon said building when same should have been completed, and that one G. Wallace Simpson of Philadelphia, represented to said Scandinavian-American Building Company that he could and would pledge such mortgage as security and thus obtain such sums of money as were necessary up to \$600,000.00 as the work on said building progressed if said mortgage were executed to him, such sums so obtained as advances to be repaid to the lenders thereof out of the money obtained from said Metropolitan Life

Insurance Company, when said building was completed.

III.

That in accordance with the said agreement and on the 10th day of March, 1920, the said Scandinavian-American Building Company, in the due exercise of the powers and authority in [65] that behalf by it possessed, due corporate action having first been had for that purpose, made, executed and delivered to said G. Wallace Simpson its promissory note, in writing, in the principal sum of \$600,000.00 bearing interest at the rate of 6% per annum until maturity, interest payable semi-annually on the 1st days of May and November of each year, and the principal payable at the rate of \$10,000.00 on November 1, 1921, \$10,000.00 on May 1, 1922, and \$10,000.00 on the first days of November and May thereafter until the 1st day of November, 1935, when the balance of the said principal, with interest, amounting to \$320,000.00, should become due and payable.

IV.

That on said March 10th, 1920, the said Scandinavian-American Building Company, in the due exercise of the powers and authority by it in that behalf possessed, corporate action having first been had, in order to secure the payment of the principal and interest of the said note, and to secure the performance and observance of all the covenants contained in the mortgage hereinafter mentioned, and in accordance with the agreements made with the said Scandinavian-American Bank of Tacoma, hereinabove referred to, made, executed and delivered to

the said G. Wallace Simpson a mortgage wherein it mortgaged to the said Simpson the said property described in said agreement, viz., Lots 10, 11 and 12, in block 1003, as the same are known and designated upon that certain plat entitled, "Map of New Tacoma, W. T.," which was filed for record in the office of the Auditor of Pierce County, Washington, on February 3, 1875.

V.

That a true copy of the said mortgage to the said Simpson is attached to this cross-bill of complaint and marked Exhibit "Y" and the cross-complainants pray leave that said copy marked Exhibit "Y" may be taken in all respects as if it were fully and completely set forth in the body of this cross-bill of complaint.

VI.

That the said mortgage was duly filed for record in the office of the Auditor of Pierce County, Washington, on March 10th, 1920, at 4:57 P. M., and was recorded in book 225 of Records of Mortgages, Pierce County, on page 320.

VII.

That pursuant to the said contracts hereinabove mentioned the said Scandinavian-American Building Company began the erection of a sixteen-story building upon the lots therein described, and for such purposes contracted with certain laborers and materialmen, some of whom are the defendants herein, for materials and labor to be used in the construction of the said building, all of which by their terms provide that said laborers and material-

men should have no liens against the real property described in said contract, Exhibit "X."

VIII.

That on or about the 25th day of June, 1920, the said G. Wallace Simpson, having failed to obtain advances upon the security of said mortgage, and the said Scandinavian-American Building Company being in need thereof, and said Scandinavian-American Bank of Tacoma advanced to the said Scandinavian-American Building Company the sum of \$432,822.99 at various times between the said 25th day of June, 1920, and the 15th day of January, 1921, and the said Scandinavian-American Building Company caused the said G. Wallace Simpson to resign to the said Scandinavian-American Bank of Tacoma the said mortgage hereinabove referred to and marked Exhibit "Y" attached hereto; that in making of the advances herein referred to the said Scandinavian-American Bank of Tacoma fulfilled the agreement of the said G. Wallace Simpson to the extent of the said \$432,822.99.

IX.

That the said mortgage attached hereto and marked Exhibit "Y" was conditioned, among other things, upon the payment of the interest of the said note when due, according to the terms and conditions of the said note; and that it is provided, among other things, that if default should be made in the principal of the said note thereby secured, or of the interest thereon when same became payable, then the principal sum, with all arrearages of interest thereon, and attorney's fees, should, at the option of

the mortgagee, become due and payable thereafter; and that the said Scandinavian-American Building Company has failed to pay the interest upon the said promissory note according to the terms thereof; and that there is now due and owing from the said Scandinavian-American Building Company to the said Scandinavian-American Bank of Tacoma and to the cross-complainant, J. P. Duke, as such Supervisor of Banks, the following sums with interest at six per cent per annum thereon until paid, as follows, to wit:

June 25, 1920	\$200,000.00
Dec. 31, 1920	209,133.25
Jan. 15, 1921	32,822.99
	<hr/>
Total	\$441,956.34

[66]

X.

That by filing this cross-bill of complaint, these cross-complainants exercise their option of declaring the aforesaid principal sum and all arrearages of interest thereon and attorney's fees to be immediately payable as in said mortgage provided.

XI.

That in said note and mortgage it is expressly agreed that in case any action or proceeding is brought upon said note or to foreclose said mortgage, the holder thereof shall be entitled to such attorney's fees as the Court shall deem reasonable, and cross-complainants aver that the sum of \$40,000.00 is a reasonable attorney's fee in this matter.

XII.

That no proceeding has been had at law or otherwise, and that no other action has been brought for the recovery of the said sum or any part thereof.

XIII.

The cross-complainants further show upon information and belief that the plaintiff, McClintic-Marshall Company, a corporation, and the defendants, F. P. Haskell as receiver of the Scandinavian-American Building Company, a corporation; Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased; R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company; G. Wallace Simpson; Savage-Scofield Company, a corporation; Puget Sound Iron & Steel Works, a corporation; E. E. Davis & Company, a corporation; St. Paul & Tacoma Lumber Company, a corporation; Far West Clay Company, a corporation; Henry Mohr Hardware Company, Inc., a corporation; Hunt & Mottet Company, a corporation; Edward Miller Cornice & Roofing Company, a corporation; Washington Brick, Lime & Sewer Company, a corporation; Otis Elevator Company, a corporation; U. S. Machine & Engineering Company, a corporation; Colby Star Manufacturing Company, a corporation; Tacoma Shipbuilding Company, a corporation; Crane Company, a corporation; Ben Olson Company, a corporation; H. C. Greene, doing business as H. C. Greene

Iron Works; Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company; S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency; J. D. Mullins, doing business as J. D. Mullins Bros.; S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company; M. Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore Hedlund, doing business as Atlas Paint Company; F. H. Madsen and Gustaf Jonason, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, George W. Hicks, Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal; Sherman Wells, Carl J. Gerring, George Gerring, F. R. Schoen, Adolph W. Aufang, C. H. Boedecker, William L. Owens, Frederick Webber, F. H. Godfrey, W. E. Morris and Samuel Rothstein have, or claim to have, some interest in or lien upon the said mortgaged premises or some part thereof; but cross-

complainants aver that the interest of each of said defendants, if any, is inferior, subject and subsequent to the lien of the cross-complainants by virtue of the premises, as above set forth.

WHEREFORE these cross-complainants pray :

(1) That said mortgage, Exhibit "W," be foreclosed ;

(2) That the lien of said mortgage, Exhibit "W," may be decreed and established as a lien upon all and particular, the premises and property covered thereby, prior to any and all other liens and claims; and that a fair and just account may be had touching the amount due to cross-complainants upon the mortgage aforesaid.

(3) That in default of the payment of the sum so found to be due within a time to be limited by a decree of this Honorable Court, together with such sum as may be sufficient to pay all expenses of having abstracts of title and tax histories certified to date, together with interest thereon, and together with such sum as may be allowed by this Honorable Court to the plaintiff for attorney's compensation and for costs, and it may be decreed that the defendants, and all persons claiming from, through or under them, or any of them, may be absolutely and forever barred and foreclosed of and from all right, title, interest or equity of redemption of, in and to the said mortgaged premises and property, or any part thereof, and that a sale of the said mortgaged premises and property, free and clear of all other liens and claims whatsoever, be ordered in accordance with the laws and the practice

of this Honorable Court; and that [67] the proceeds may be applied to the expenses of this proceeding and attorney's compensation, and to the amount found due the plaintiff herein, and the balance, if any, may be applied as this Honorable Court may direct.

(4) That the contract, Exhibit "X," made by the defendant Scandinavian-American Building Company with the Scandinavian-American Bank of Tacoma be established by a decree of this Honorable Court as an equitable purchase money mortgage upon the premises therein described and covered thereby to the extent of \$350,000.00 with interest thereon from June 10th, 1920, at the rate of 6% per annum until paid, that same be foreclosed and that the lien of said mortgage, Exhibit "X," may be decreed and established as a lien upon all and singular the premises and the property of the defendant Scandinavian-American Building Company covered thereby, prior to any and all other liens and claims except the mortgages hereinabove referred to; and that a fair and just account may be had fixing the amount due the said cross-complainants upon the mortgage aforesaid, and that in default of the payment of the amount so found to be due within a time to be limited by a decree of this Honorable Court it may be decreed that the defendants, and all persons claiming any interest in or to the said mortgaged premises, or any part thereof, from, through or under them, or any of them, may be absolutely and forever barred and foreclosed of any and all right, title and interest or equity of

redemption of, in and to said mortgaged premises and property, or any part thereof, and that a sale of said mortgaged premises and property, free and clear of all liens and claims whatsoever, except the mortgages hereinabove referred to, be ordered in accordance with law and the practice of this Honorable Court, and that the proceeds may be applied to the expenses of said sale, and to the payment of the amount found due as aforesaid upon the principal and interest due to cross-complainants, as aforesaid, and the balance, if any, as this Honorable Court may direct.

(5) That the said mortgage, Exhibit "Y," made by the defendant Scandinavian-American Building Company, be foreclosed, that the lien of said mortgage, Exhibit "Y," may be decreed and established as a lien upon all and singular the premises and property of the defendant Scandinavian-American Building Company covered thereby, prior to any and all other liens and claims, except the first mortgage, Exhibit "W," hereinabove referred to, and that a fair and just account may be had touching the amount due the cross-complainants upon the said note and mortgage aforesaid; that in default of the payment of the amount so found to be due within a time to be limited by a decree of this Honorable Court, together with interest thereon, and together with such sums as may be allowed by this Honorable Court to the cross-complainants for attorney's compensation, it may be decreed that the defendants and all persons claiming any interest in or to the said mortgaged property, or any part

thereof, from, through or under them or either or any of them, as aforesaid, subject to the liens of the said mortgage hereinabove referred to as Exhibit "W" as aforesaid may be absolutely and forever barred and foreclosed of and from all right, title, and interest or equity of redemption of, in and to said mortgaged premises and property, or any part thereof, and that a sale of the whole of said mortgaged property, subject to the liens of the mortgage hereinabove referred to as Exhibit "W," but free and clear of all other claims and liens whatsoever, be ordered in accordance with law and the practice of this Honorable Court; and that the proceeds may be applied to the expenses of this proceeding and to attorney's compensation, and to the payment of the amount found due as aforesaid upon the principal and interest of the note secured by the mortgage, Exhibit "Y," and the balance, if any, as this Honorable Court may direct.

(6) That the defendants herein and the plaintiff, McClintic-Marshall Company, may answer all and singular the premises, but not under oath (answer under oath being hereby expressly waived).

(7) That cross-complainants may have such other and further relief in the premises as the nature and circumstances of the case require and as your Honor may seem fit.

May it please your Honor to grant to your cross-complainant writs of subpoena, to be directed to the plaintiff, McClintic-Marshall Company, a corporation, and to the defendants, Ann Davis and R. T.

Davis, Jr., as executors of the estate of R. T. Davis, deceased; R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company; G. Wallace Simpson; Savage-Scofield Company, a corporation; Puget Sound Iron & Steel Works, a corporation; E. E. Davis & Co., Inc., a corporation; St. Paul & Tacoma Lumber Company, a corporation; Far West Clay Company, a corporation; Henry Mohr Hardware Co., Inc., a corporation; Hunt & Mottet Company, a corporation; Edward Miller Cornice & Roofing Company, a corporation; Washington Brick, Lime & Sewer Company, a corporation; Otis Elevator Company, a corporation; U. S. Machine & Engineering Co., Inc., a corporation; Colby Star Manufacturing Company, a corporation; Tacoma Shipbuilding Company, a corporation; Crane Company, a corporation; Ben Olson Company, a corporation; H. C. Greene, doing business as H. C. Greene Iron Works; Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company; S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency; J. D. Mullins, doing business as J. D. Mullins Brothers; S. J. Pritchard and C. H. Graves, copartners doing [68] business as P. & G. Lumber Company; M. Kleiner, doing business as Liberty!

Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore Hedlund, doing business as Atlas Paint Company; F. H. Madsen and Gustaf Jonason, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, O. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, George W. Hicks; Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis and Neal; Sherman Wells, Carl J. Gerring, George Gerring, F. R. Schoen, Adolph W. Aufang, C. H. Boedecker, William L. Owens, F. H. Godfrey, W. E. Morris, Samuel Rothstein, and Frederick Webber, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named to be and appear before your Honor in this Honorable Court; then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being expressly waived, and to stand to and abide and perform such

other and further orders or decrees as to your Honor shall seem meet.

J. D. DUKE,
Supervisor of Banks of the State of Washington.

F. D. OAKLEY,
401 Perkins Building, Tacoma, Wash-
ton.

GUY E. KELLY,
THOMAS MacMAHON,
1005 Rust Building, Tacoma, Washington.
Solicitor for Cross-complainant.

United States of America,
Western District of Washington,
Southern Division,
County of Thurston,—ss.

J. P. Duke, being first duly sworn, on oath deposes and says, that he is the cross-complainant above named and the Supervisor of Banks of the State of Washington; that he has read the above and foregoing cross-bill of complaint, knows the contents thereof, and believes the same to be true.

J. P. DUKE.

Subscribed and sworn to before me this 14th day of June, 1921.

[Seal] FRED G. COOK,
Notary Public for Washington, Residing at Olympia. [69]

Exhibit "W."

MORTGAGE.

THIS INDENTURE, made this 2nd day of September, A. D. 1910, between J. E. CHILBERG and

ANNA M. CHILBERG, husband and wife at all times since previous to acquiring title to the within described property, jointly and severally, hereinafter referred to as the "first party," and THE PENN MUTUAL LIFE INSURANCE COMPANY, a corporation, organized under the laws of the State of Pennsylvania, and having its principal place of business at Philadelphia, hereinafter referred to as the "second party":

WITNESSETH, that the first party in consideration of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS, to first party in hand paid by second party, the receipt of which is hereby acknowledged, does by these presents grant, sell, convey and warrant unto second party, its successors and assigns, the following described property, situated in Pierce County, Washington, to wit:

Lots numbered eleven (11) and twelve (12) in Block numbered ten hundred and three (1003) in the City of Tacoma as shown and designated on a certain plat entitled "Map of New Tacoma, Washington Territory," which plat was filed for record in the office of the Auditor of said Pierce County February 3rd, 1875;

Also including herein the party walls on each or either side of said premises, and the agreements respecting the same, and all rights in or to said party walls or under or by virtue of all of the agreements respecting the same;

Any streets or alleys, or portions thereof, on which the above property abuts which have

been or may hereafter be vacated by City Council or otherwise and be annexed to the above described property, or become the property of the mortgagors, their heirs, executors, successors and assigns, shall immediately become additional security under this mortgage and subject to all the terms and conditions in said mortgage;

together with all the buildings and structures thereon or that may hereafter be placed thereon, and also any and all elevators, engines, boilers, and all heating, lighting, plumbing and ventilating fixtures and apparatus now on said premises, or that may hereafter be placed thereon, with all and singular the tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining, hereby expressly waiving and relinquishing any and all right or claim of homestead, and the benefit of any and all exemption, appraisal or stay laws of the State of Washington.

TO HAVE AND TO HOLD the above granted premises unto second party, its successors and assigns, forever, with all the tenements, hereditaments and appurtenances thereto belonging.

First party hereby covenants and agrees to and with second party as follows, to wit:

1. That first party is seized of said premises in fee simple absolute, and has good right to convey and mortgage the same.
2. That second party shall quietly enjoy said premises.

3. That said premises are free from all encumbrances.

4. That first party will execute or procure and deliver to second party upon demand any and all further conveyances or other instruments necessary or proper to render this mortgage a first lien upon a good and marketable title to said property.

5. That first party will warrant and defend the title to said property forever against all lawful claims and demands whatsoever.

THIS INSTRUMENT IS A MORTGAGE given to secure the payment of the following sums and the performance of the following agreements, to wit:

1. The first party is justly indebted to the second party in the principal sum of \$100,000.00 evidenced by a certain negotiable promissory note of even date herewith, made by first party and payable to the order of second party, payable on the 1st day of September, A. D. 1915, with interest thereon from date until maturity at the rate of 5 per cent per annum, and from maturity until paid at the rate of twelve per cent per annum, payable semi-annually on [70] the 1st days of March and September in each year, both principal and interest payable only in United States gold coin of the present standard of weight and fineness, at the office of PENN MUTUAL LIFE INSURANCE COMPANY, Philadelphia, Pennsylvania, with New York exchange. All as shown in said note and in the interest coupons thereto attached; which said principal and interest first party hereby promises

and agrees to pay, and first party hereby consents to the entry of a deficiency judgment against first party jointly and severally for whatever balance of the judgment debt, costs, expenses, or attorney fees that may remain unsatisfied after the foreclosure sale, if any be made, hereunder.

First party hereby agrees to at once procure and maintain at least \$80,000.00 fire insurance on the buildings now or hereafter erected upon said property, in some responsible insurance company to be approved by second party, with loss, if any, in said insurance and in all insurance now or hereafter carried by first party on said property, payable to second party, its successors or assigns, as its interest may appear, and first agrees to pay all premiums therefor when due, and to forthwith deliver to second party all policies for all insurance now or hereafter carried on said property to be held by second party until date of expiration, whether before or after foreclosure, with the right, but under no obligation, to collect by suit or otherwise, and at first party's expense, any and all money that may at any time become payable thereon, and to apply the same when received to the payment of any part of the indebtedness secured by this mortgage, together with all the costs and expenses incurred in collecting same, including attorney fees, or second party may elect to have the buildings repaired or new buildings erected on said mortgaged premises. If first party shall for any reason fail to procure such insurance, or any part thereof, then second party shall have the right, but shall be under no

obligation to procure the same, or any part thereof, and to pay the premiums therefor, and first party agrees to repay same to second party on demand.

First party agrees to keep all the property above described or referred to in as good repair and condition as same is now in, or may be put in during the continuance of this mortgage, and not to commit or permit waste of said premises until the debt hereby secured is fully paid.

First party hereby agrees to pay all taxes, assessments, and other public charges that have been or may hereafter be levied or assessed upon said premises, or upon said mortgage or the note hereby secured, or against the holder on account thereof, and all personal taxes of first party, before same become delinquent, and to deliver to second party satisfactory receipts showing payment thereof, and also agrees to pay or discharge delinquent any and all liens, or claims of any nature now existing or that may hereafter be created or perfected on or against said property mortgaged hereby, so that this mortgage shall be and continue a first lien on all said property above described until all sums hereby secured are fully paid. If first party shall fail to perform any of the foregoing agreements, then second party shall have the right, but shall be under no obligation, to pay, contest, or extinguish such taxes, assessments, insurance premiums, liens, claims, adverse titles, or encumbrances, or cause said repair to be made, and the amount so paid including all necessary expenses and attorney fees, with interest thereon at the rate of twelve per cent

per annum from the date of any advancement until the same is wholly repaid, shall be a lien upon the premises aforesaid and be secured by this mortgage and collected in the same manner and as a part of the debt secured hereby, and said first party expressly agrees to pay the same on demand.

The first party shall not, and will not apply for or claim any deduction by reason of this mortgage from the taxable value of said land, premises or property, but will pay all taxes upon the same in full, and also all taxes which may be levied upon this mortgage or the moneys secured hereby, without regard to any law heretofore enacted or hereafter to be enacted assessing the whole or any part thereof to the party of the second part. Upon violation of this condition or the passage by the state of a law imposing upon the mortgagee payment of the whole or any portion of the taxes on the mortgaged premises or upon the moneys or loan secured by this mortgage, or upon the rendering by any court of competent jurisdiction of a decision that the assumption by the mortgagor of liability to pay any tax or taxes assessed against the mortgagee is legally inoperative, then and in any such event the debt hereby secured may, at the option of the party of the second part, immediately become due and collectible, as though the debt had matured through lapse of time, and without any deduction, anything herein contained or any law which has passed to the contrary notwithstanding.

First party hereby agrees that in case of any failure to pay any part of the sums hereby secured,

either principal or interest, taxes, liens, encumbrances, repairs, insurance premiums, or other items herein referred to, according to the terms of said note and interest notes, or of this mortgage, when the same become due or payable, or in case of any failure to comply with any of the conditions or agreements contained in this mortgage, the whole sum secured hereby shall at the option of second party, become at once due and payable, without any notice or demand, with interest from date of default until paid at the rate of twelve per cent per annum, it being agreed that time and the strict performance of the provisions hereof and of said note and interest notes are material and of the essence of the same, and said mortgage may be foreclosed, whereupon, in addition to the sum found due at the time of foreclosure, first party hereby agrees to pay the second party as attorney fees in said suit the sum provided therefor in said [71] note, and also the expense of having the abstract of title to said premises brought down to date to show the commencement of said foreclosure proceedings, together with the costs and disbursements of such suit.

It is further agreed that in case of any default in any respect so that this mortgage may be foreclosed, all the rents, revenues and profits of said premises during the existence of this mortgage and until the payment of the debt secured hereby and until the expiration of the time for redemption after foreclosure sale, or execution, are hereby mortgaged and pledged to the payment of the indebtedness secured hereby, and that upon any default on the

part of said first party in the performance of any of the terms, conditions or provisions of this mortgage, said note, or said interest notes, it is agreed and shall be conclusively presumed that said rents, revenues and profits are in danger of being lost, removed and materially injured, and that said premises are insufficient to discharge the debt secured hereby; that upon the filing of the complaint to foreclose this mortgage, the court, on motion of second party, and without any notice to first party, shall appoint a receiver with the usual powers, to take immediate possession of all of the property mortgaged hereby, and to demand, receive and recover all rents, revenues and profits of said property then due or payable or that may thereafter become due or payable; that said receivership shall, at the option of the second party, continue until payment of the whole sum secured hereby, or until the expiration of the time of redemption after the foreclosure sale hereunder. That said receiver shall, on motion of second party, under the order and direction of the Court, pay any or all taxes, or other liens, insurance, and repairs on said property, out of the money so received by him, and shall pay the balance, after the expenses of said receivership have been paid, to the plaintiff in the action to apply on said mortgage indebtedness. It is agreed that said party of the second part shall be under no liability of any nature because of or arising out of the appointment of such receiver, or any of his acts or doings.

All of the provisions and agreements herein contained shall be binding on the party or parties of the first part, jointly and severally, as principals, and their respective heirs, executors, administrators, successors and assigns, as fully and to the same effect as if expressly named herein, and all rights created or evidenced hereby or by said note, or said interest notes, shall inure to the benefit of the heirs, executors, administrators, successors and assigns and said second party, as fully as if expressly named herein, and may be exercised by them.

PROVIDED, HOWEVER, that if all the foregoing covenants, agreements and stipulations shall be fully performed according to the true intent hereof, this mortgage shall thenceforth be null and void, and shall be released by second party at the cost of first party.

IN WITNESS WHEREOF, first parties have subscribed their names hereto, jointly and severally, as principals.

(Signed) J. E. CHILBERG.

(Signed) ANNA M. CHILBERG.

Executed in the presence of

E. L. SHANSTROM (Signed).

State of Washington,
County of King,—ss.

I, Percy C. Shanstrom, a Notary Public in and for the State of Washington, residing at Seattle in said County, do hereby certify that on this 20th day of September, A. D. 1910, personally appeared before me J. E. Chilberg and Anna Chilberg, husband and wife, both of whom stated to me under oath that

they were husband and wife at time of acquiring title to the within described property and have so remained at all times since, to me known to be the individuals described in and who executed the within instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 20th day of September, A. D. 1910.

[Notary Seal]

(Signed) PERCY C. SHANSTROM,
Notary Public in and for the State of Washington,
Residing at Seattle in said State. [72]

No. 324812

MORTGAGE

J. E. CHILBERG & WIFE

TO

THE PENN MUTUAL LIFE INSURANCE
COMPANY

State of Washington,
County of Pierce,—ss.
Office of County Auditor

I hereby certify that the within Mortgage was received for record in this office on the —Sep. 23, 1910 — day of — A. D. 1910 — at 3:46 o'clock P. M., and recorded at the request of Calvin Philips

& Company, in Book 165 of Mortgages, on page 452.

W. A. STEWART,
County Auditor.

(Signed) HARRY AUSTIN,
Deputy County Auditor.

Negotiated by

CALVIN PHILIPS & CO.,

Tacoma Office: 211-12-13 California Building.

Seattle Office: 322 Bailey Building. [73]

Exhibit "X."

CERTIFICATE AND AGREEMENT

THIS INDENTURE made this 20th day of February, 1920,

WITNESSETH:

That WHEREAS pursuant to resolution of SCANDINAVIAN-AMERICAN BANK OF TACOMA, adopted at a meeting of the Board of Directors of said SCANDINAVIAN-AMERICAN BANK OF TACOMA on the 10th day of February, 1920, a copy of said resolution being attached hereto and marked Exhibit "A" and by this reference made a part hereof as though set forth in full herein, the SCANDINAVIAN-AMERICAN BUILDING COMPANY agreed to execute to SCANDINAVIAN-AMERICAN BANK OF TACOMA a certificate or agreement to deliver said SCANDINAVIAN-AMERICAN BANK OF TACOMA bonds of the par value of \$350,000, bearing interest at 6

per cent per annum, payable semi-annually and secured by a second mortgage upon

Lots 10, 11 and 12, in Block 1003, "Map of New Tacoma, W. T.," situated in Pierce County, Washington,

the total issue of said second mortgage bonds not to exceed the sum of \$750,000, and

WHEREAS pursuant to said resolution said SCANDINAVIAN-AMERICAN BANK OF TACOMA has executed and delivered to SCANDINAVIAN-AMERICAN BUILDING COMPANY this day a warranty deed of conveyance to said lots 11 and 12, described in said resolution.

NOW, THEREFORE, and for and in consideration of the execution of said deed the undersigned, SCANDINAVIAN-AMERICAN BUILDING COMPANY, does hereby agree to execute and deliver to SCANDINAVIAN-AMERICAN BANK OF TACOMA, within a period of four (4) months from the 10th day of February, 1920, mortgage bonds of the face or par value of \$350,000, being a part of a total issue of \$750,000; said bonds to bear interest at 6 per cent per annum, payable semi-annually and to contain a tax-free covenant with respect to the income thereon as is provided in said resolution and to be secured by a second mortgage upon

Lots 10, 11 and 12, in block 1003, "Map of New Tacoma, W. T.," situated in Pierce County, Washington,

and upon the delivery of said bonds, this certificate to be returned to the undersigned.

IN WITNESS WHEREOF this certificate is executed by said SCANDINAVIAN-AMERICAN BUILDING COMPANY, by its President and Secretary thereunto duly authorized this 20th day of February, 1920.

SCANDINAVIAN-AMERICAN BUILDING COMPANY.

By (Signed) CHARLES DRURY,
President.

By (Signed) J. V. SHELDON,
Secretary. [74]

EXHIBIT "A" ATTACHED TO EXHIBIT "X."

WHEREAS the SCANDINAVIAN-AMERICAN BANK OF TACOMA is the owner of lots 11 and 12 in block 1003, in "Map of New Tacoma, W. T.," situated in Pierce County, Washington, which property is at the present time encumbered by a mortgage in the principal sum of \$70,000, and

WHEREAS SCANDINAVIAN-AMERICAN BUILDING COMPANY, a corporation, organized under the laws of the State of Washington, has proposed to purchase said property for the consideration of \$350,000 and proposes to erect upon said premises and lot 10 adjoining, a modern office building of approximately sixteen stories in height and to provide the ground floor thereof with space and accommodations for a metropolitan banking institution, which space shall be reserved for the use of this bank upon a rental to be agreed upon, and

WHEREAS for the purpose of financing the construction and erection of said building, the follow-

ing arrangement has been entered into by said SCANDINAVIAN-AMERICAN BUILDING COMPANY, to wit:

A first mortgage for the principal sum of \$600,000 to be executed by said SCANDINAVIAN-AMERICAN BUILDING COMPANY upon all three lots, which said mortgage must be executed and recorded before actual construction shall begin and before any contract for such construction shall have been let and a series of second mortgage bonds of the total par value of \$750,000 to be executed and secured by a second mortgage on said premises, which said bonds shall run for a period of fifteen (15) years and bear interest at 6 per cent per annum, payable semi-annually, and contain a covenant exempting the income thereof equal to 2 per cent of the total par value of said bonds exempt from taxation by the Federal Income Tax Laws, and

WHEREAS said SCANDINAVIAN-AMERICAN BUILDING COMPANY cannot execute said first mortgage or said second mortgage and the bonds to be secured thereby until it shall first have acquired title to said premises; and

WHEREAS said SCANDINAVIAN-AMERICAN BUILDING COMPANY has agreed to execute and deliver to SCANDINAVIAN-AMERICAN BANK OF TACOMA second mortgage bonds hereinbefore referred to of the par value of \$350,000 in payment for said real estate as soon as the same can expediently be prepared and be a second mortgage lien upon said premises; and

WHEREAS temporarily, said SCANDINAVIAN-AMERICAN BUILDING COMPANY will execute a certificate or agreement agreeing to so deliver said bonds as soon as the same can be executed as above provided.

NOW, THEREFORE, BE IT RESOLVED that the President and Cashier of SCANDINAVIAN-AMERICAN BANK OF TACOMA be and they hereby are authorized, directed and empowered to execute and deliver to said SCANDINAVIAN-AMERICAN BUILDING COMPANY a warranty deed of conveyance to said lots 11 and 12, in block 1003, "Map of New Tacoma, W. T.," upon receiving from said SCANDINAVIAN-AMERICAN BUILDING COMPANY a certificate or agreement agreeing

To deliver to said SCANDINAVIAN-AMERICAN BANK OF TACOMA, within four (4) months from the date hereof, bonds of the par value of \$350,000, bearing interest at 6 per cent per annum, payable semi-annually and running for a period of fifteen (15) years, which said bonds shall be secured by a second mortgage on the premises known and described as

Lots 10, 11 and 12, in block 1003, "Map of New Tacoma, W. T.,"

it being expressly understood and agreed that the total part value of all of said second mortgage bonds shall not exceed the sum of \$750,000.

The Directors next discussed the advisability of holding meetings of the board at regular intervals and it was moved, seconded and carried that regular

meetings of the Board shall hereafter be held on the second and fourth Wednesday in each month.

There being no further business, the meeting, on motion, adjourned.

Attest: _____ [75]

Exhibit "Y."

SCANDINAVIAN-AMERICAN BUILDING COMPANY, a corporation organized under the laws of the State of Washington, with its principal place of business at Tacoma, Washington (hereinafter called the Mortgagor), mortgages to G. WALLACE SIMPSON, of Philadelphia, Pennsylvania (hereinafter called the Mortgagee), the following described real estate situated in Pierce County, State of Washington, particularly described as follows:

All of lots Ten (10), Eleven (11), and Twelve (12), in Block One Thousand Three (1003), as the same are known and designated upon that certain plat entitled "Map of New Tacoma, Washington Territory," which was filed for record in the office of the Auditor of Pierce County, Washington, on February 3, 1875, said property being otherwise described as follows:

Beginning at a point where the northerly marginal line of South Eleventh Street in the city of Tacoma intersects the easterly marginal line of Pacific Avenue; thence northerly along said easterly marginal line of Pacific Avenue a distance of 74.941 feet to the intersection of said easterly marginal line with the northerly marginal line of said Lot

Ten (10); thence easterly along said northerly marginal line of said Lot Ten (10) a distance of 119.893 feet to a point where said northerly line of Lot Ten intersects the westerly marginal line of Court "A" (said Court "A" being the alley between the aforesaid Block 1003 and Block 1002 in said addition); thence southerly along said westerly marginal line of said Court "A" a distance of 74.941 feet to a point where said westerly marginal line of Court "A" intersects the northerly marginal line of South Eleventh Street; thence westerly along said northerly marginal line of South Eleventh Street a distance of 119.890 feet to the point of beginning;

TOGETHER with all the buildings now erected or that may hereafter be erected thereon.

TOGETHER with all and singular the privileges, tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining; to secure the payment in United States Gold Coin of the present standard of weight and fineness of the principal sum of Six Hundred Thousand Dollars (\$600,000.00) according to the terms and conditions of one certain promissory note executed by the mortgagor to the mortgagee, of even date herewith, which said note is in words and figures as follows:

\$600,000.00

March 10th, 1920.

For value received, without grace, I promise to pay to the order of G. Wallace Simpson, of Philadelphia, Pennsylvania, the principal sum of Six Hundred Thousand Dollars (\$600,000.00), with interest thereon from date hereof at the rate of six

per cent (6%) per annum, until maturity, payable semi-annually on the first days of May and November of each and every year. Said principal sum shall be paid as follows:

- Ten Thousand Dollars on November 1, 1921;
- Ten Thousand Dollars on May 1, 1922;
- Ten Thousand Dollars on November 1, 1922;
- Ten Thousand Dollars on May 1, 1923;
- Ten Thousand Dollars on November 1, 1923;
- Ten Thousand Dollars on May 1, 1924;
- Ten Thousand Dollars on November 1, 1924;
- Ten Thousand Dollars on May 1, 1925;
- Ten Thousand Dollars on November 1, 1925;
- Ten Thousand Dollars on May 1, 1926;
- Ten Thousand Dollars on November 1, 1926;
- Ten Thousand Dollars on May 1, 1927;
- Ten Thousand Dollars on November 1, 1927;
- Ten Thousand Dollars on May 1, 1928;
- Ten Thousand Dollars on November 1, 1928;
- Ten Thousand Dollars on May 1, 1929;
- Ten Thousand Dollars on November 1, 1929;
- Ten Thousand Dollars on May 1, 1930;
- Ten Thousand Dollars on November 1, 1930;
- Ten Thousand Dollars on May 1, 1931;
- Ten Thousand Dollars on November 1, 1931;
- Ten Thousand Dollars on May 1, 1932;
- Ten Thousand Dollars on November 1, 1932;
- Ten Thousand Dollars on May 1, 1933;
- Ten Thousand Dollars on November 1, 1933;
- Ten Thousand Dollars on May 1, 1924;
- Ten Thousand Dollars on November 1, 1924;
- Ten Thousand Dollars on May 1, 1935; [76]

and the balance of said principal sum, to wit, three hundred twenty thousand dollars (\$320,000) on November 1, 1935. Said principal sum shall bear interest from maturity until paid at the rate of twelve per cent per annum. Said principal sum and interest shall be paid in United States Gold Coin of the present standard of weight and fineness, at the office of Metropolitan Life Insurance Company in New York, N. Y.

This note with interest is secured by a first mortgage of even date herewith, executed and delivered by the maker hereof to said G. Wallace Simpson, conveying certain real estate described therein, in Pierce County, State of Washington, the terms whereof are made a part hereof.

It is hereby agreed that if default be made in the payment of this note or any part thereof, or any interest thereon, or if failure be made to perform any of the covenants or agreements contained in said mortgage securing this note, then, at the option of the holder of the same, the principal sum, with accrued interest, shall at once become due and collectible, without notice, time being of the essence of this contract, and said principal sum shall bear interest from such default until paid at the rate of twelve per cent per annum.

In case suit is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in such suit. I consent to a personal deficiency judgment on the above debt, with the intent

that the same may be paid in full, irrespective of the security given therefor.

This contract is to be construed in all respects and enforced according to the laws of the State of Washington.

SCANDINAVIAN-AMERICAN BUILD-
ING COMPANY,

By CHARLES DRURY,
Its President.

And by J. V. SHELDON,
Its Secretary.

AND THE MORTGAGOR hereby covenants and agrees with the mortgagee as follows:

FIRST. The mortgagor is lawfully seized of the premises aforesaid and the same are free and clear of all encumbrances of every nature and kind whatsoever, and the mortgagor will forever warrant and defend the same, with the appurtenances, unto the said mortgagee against the lawful claims and demands of all persons whomsoever. The mortgagor will pay all taxes assessed against said premises or against this mortgage.

SECOND. The mortgagor consents to a personal deficiency judgment for the debt hereby secured, to the intent that said debt may be paid in full, irrespective of this security; and in the event of suit brought upon this note or mortgage, the mortgagor agrees to pay such sum as the court shall consider reasonable as attorney's fees and costs.

THIRD. Whenever the singular or plural number is used herein, it shall equally include the other, and every mention herein of mortgagor or mortga-

gee shall include the heirs, executors, administrators, successors and assigns of the party or parties so designated.

FOURTH. All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators, motors, bath-tubs, sinks, water closets, basins, pipes, faucets, and other plumbing and heating fixtures, mirrors, mantels, refrigerating plant and ice-boxes, cooking apparatus and appurtenances, and such other goods and chattels and personal property as are ever furnished by a landlord, in letting or operating an unfurnished building similar to the one herein described and referred to, and which are or shall be attached to said building or buildings by nails, screws, bolts, pipe connections, masonry, or in any other manner, and any building which may be erected during the life of this mortgage upon the land covered hereby, are and shall be deemed to be fixtures and an accession to the freehold and a part of the realty, as between the parties hereto and all persons claiming by, through, or under them, and shall be deemed to be a portion of the security for the indebtedness herein mentioned and be covered by this mortgage.

FIFTH. The mortgagee shall be at liberty, immediately after any default in the payment of the principal of said note or of any installment thereof, or of the interest which shall accrue thereon, or of any tax, assessment, water rate, municipal light or heat rate or charge, or premium of fire insurance, or of any part of either at the respective times therein specified for the payment thereof, upon a

complaint filed or any other proper legal proceeding being commenced for the foreclosure of this mortgage, to apply for, and the said mortgagee shall be entitled, as a matter of right, without consideration of the value of the mortgaged premises as security for the amounts due the mortgagee herein or of the solvency of any person or persons obligated for the payment of such amounts, to the appointment by any court or tribunal, without notice to any party, of a receiver of the rents, issues and profits of the said premises, with power to lease [77] said premises, or such part thereof as may not then be under lease, and with such other powers as may be deemed necessary, who, after deducting all proper charges and expense attending the execution of said trust as receiver, shall apply the residue of said rents and profits to the payment and satisfaction of the amount remaining secured hereby, or to any deficiency which may exist after applying the proceeds of the sale of said premises to the payment of the amount due, including interest and the costs of foreclosure and sale; and the said rents and profits are hereby, in the event of any default or defaults in the payment of said principal, or interest, or of any tax, assessment, water rate, municipal light or heat rate or charge, or insurance, pledged and assigned to the mortgagee, who shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises and to let the said premises, and to receive the rents, issues, and profits thereof, and apply the same,

after payment of all necessary charges and expense, on account of the amount hereby secured.

SIXTH. The whole of said principal sum shall become due at the option of the mortgagee after default in the payment of interest for thirty days, or after default in the payment of any tax, assessment, water rate, municipal light or heat rate or charge for sixty days after the same shall become due and payable, or after default in the payment of any installment herein mentioned, or immediately upon the actual or threatened demolition or removal of any building erected on said premises.

SEVENTH. The whole of said principal sum and interest shall become due at the option of the mortgagee upon failure of any owner of the above described premises to comply with the requirements of any department of the City of Tacoma within thirty days after notice of such requirement shall have been given to the then owner of said premises by the mortgagee.

EIGHTH. If default be made in the payment of the indebtedness as herein provided or of any part thereof, the mortgagee shall have the power to sell the premises herein described, according to law; said premises may be sold in one parcel, any provision of law to the contrary notwithstanding.

NINTH. The mortgagor will keep the buildings on said premises insured against loss by fire in the sum of at least eight hundred fifty thousand (\$850,000.00), in such manner, terms, and in such companies and for such amounts as may be satisfactory to the mortgagee, until the debt hereby secured is

fully paid, and will keep such policies constantly assigned to the mortgagee, and deliver renewals thereof to Metropolitan Life Insurance Company, at its home office in New York seven days in advance of the expiration of the same, stamped "PAID" by the agent or company issuing the same. Said policies and renewals thereof shall contain the New York standard mortgagee clause, with full contribution clause eliminated. All of said policies shall be written to expire on one and the same date. In the event the mortgagor shall for any reason fail to keep said premises so insured, or shall fail to deliver the policies of insurance or renewals thereof to Metropolitan Life Insurance Company, as aforesaid, or shall fail to pay the premiums thereon, the mortgagee, if he so elects, may have such insurance written and pay the premiums thereon, and any premiums so paid shall be secured by this mortgage and repaid by the mortgagor within ten days after payment thereof by the mortgagee. In default thereof the whole principal sum and interest and insurance premiums, with interest on such sums paid for such insurance from the date of payment, may be and shall become due at the election of the mortgagee, anything herein to the contrary notwithstanding.

TENTH. Should the mortgagee, by reason of any such insurance against loss by fire as aforesaid, receive any sum or sums of money for any damage by fire to the said building or buildings, such amount may be retained and applied by it toward payment of the amount hereby secured; or the same may be

paid over, either wholly or in part, to the mortgagor, to enable the mortgagor to repair said buildings or to erect new buildings in their place, or for any other purpose or object satisfactory to the mortgagee without affecting the lien of this mortgage for the full amount secured thereby before such damage by fire, or such payment over, took place.

ELEVENTH. The mailing of a written notice and demand, by depositing it in any postoffice, station or letter-box, enclosed in a postpaid envelope, addressed to the owner of record of said mortgaged premises and directed to said owner at the last address actually furnished to the holder of this mortgage, or, in default thereof, directed to said owner at said mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument, and required by the provisions thereof or the requirements of law.

TWELFTH. In default of the payment by mortgagor of all or any taxes, charges, and assessments which may be imposed by law upon the said mortgaged premises or any part thereof, or against this mortgage, it shall and may be lawful for the said mortgagee to pay the amount of any such tax, charge, or assessment, with any expenses attending the same; and any amount so paid, the mortgagor shall repay to the mortgagee, on demand, with interest thereon, and the same shall be a lien on the said premises and be secured by the said note and by these presents; and the whole amount hereby secured, if not then due, shall thereupon, if the said mortgagee so elects, become due and payable forthwith. [78]

THIRTEENTH. And it is further mutually covenanted and agreed that in the event of the passage, after the date of this mortgage, of any law of the State of Washington, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, or the note hereby secured, the whole of the principal sum secured by this mortgage, together with the interest due thereon, shall, at the option of the mortgagee, without notice to any party, become immediately due and payable.

IN WITNESS WHEREOF, the mortgagor has hereunto set its hand and affixes its corporate seal, by its officers thereunto duly authorized, this 10th day of March, 1920.

SCANDINAVIAN-AMERICAN BUILD-
ING COMPANY,

By CHARLES DRURY,

Its President.

Attest J. V. SHELDON,

Its Secretary.

(Scandinavian-American)

(Building Company,)

(Tacoma, Washington,) SEAL

(Corporate Seal.)

State of Washington,

County of Pierce,—ss.

THIS IS TO CERTIFY that on the 10th day

of March, 1920, before me, a Notary Public in and for the State of Washington, personally appeared Charles Drury and J. V. Sheldon, to me known to be the president and secretary respectively of Scandinavian-American Building Company, the corporation which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal the day and year first above written.

(Signed) E. F. FREEMAN,

Notary Public in and for the State of Washington,
Residing at Tacoma.

State of Washington,)

E. F. Freeman,)

Notary Public.) SEAL

Commission expires)

Sept. 24, 1920.)

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 14, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [79]

**Acknowledgment of Service of Cross-complaint and
Answer of J. P. Duke et al. and Appearance
and Waiver.**

We, the undersigned, hereby acknowledge service of the cross-complaint and answer of defendants J. P. Duke, (as Supervisor of Banking of the State of Washington, and Scandinavian-American Building Company, a corporation, and hereby waive the issuance of subpoena and appear herein in their behalf as to said cross-complaint.

Signed June 14, 1921.

STILES & LATCHAM and
J. F. FITCH,

Attorneys for Ben Olson Company.

Signed June 15th, 1921.

JAMES W. REYNOLDS,
Attorneys for E. E. Davis & Co.,

Signed June —, 1921.

DAVIS & NEAL,
L. R. BONNEVILLE,

Attorneys for Robert M. Davis & Frank C. Neal.

Signed June 15th, 1921.

FLICK & PAUL,

Attorneys for Ann Davis and R. T. Davis, Jr., as
Executors of the Estate of R. T. Davis, Deceased;
R. T. Davis, Jr., Lloyd Davis, Harry L. Davis,
George L. Davis, Maude A. Davis, Marie Davis,
Ruth G. Davis, Hattie Davis Tennant, and
Ann Davis.

Signed June 14th, 1921.

HERBERT S. GRIGGS and
L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lumber Co.

Signed June 14th, 1921.

BURKEY, O'BRIEN & BURKEY,

Attorneys for H. O. Matthews and Frank L. Johns,

Copartners as City Lumber Agency.

Signed June 14th, 1921.

W. W. KEYES,

Attorney for Henry Mohr Hdw. Co.

Signed June 14, 1921.

FITCH & ANDERSON,

Attorneys for Savage-Scofield Company.

Signed June 14th, 1921.

DEWITT M. EVANS,

Attorneys for F. R. Schoen.

Signed June 15, 1921.

H. O. MYERS,

Attorney for H. C. Green, Doing Business as Green

Iron Works. [80]

Signed June 15th, 1921.

D. R. HIPPE,

Attorney for Theo Hedlund, Doing Business as

Atlas Paint Company.

Signed June 14, 1921.

STILES & LATCHAM,

Attorneys for F. H. Godfrey.

Signed June 14th, 1921.

B. S. GROSSCUP and
W. C. MORROW,

Attorneys S. J. Pritchard, C. H. Graves and Emma
Graves, Copartners as P. & G. Lumber Com-
pany.

Signed June 14, 1921.

W. W. KEYES,

Attorney for Hunt Mottet Company.

Signed June 15th, 1921.

HARTMAN & HARTMAN,
Attorneys for W. E. Morris.

Signed June 14, 1921.

B. S. GROSSCUP and
W. C. MORROW, 7
C. A. WALLACE,

Attorneys for Colby Star Mfg. Co.

Signed June 14, 1921.

CHARLES BEDFORD,

Attorneys for M. A. Hansen, A. J. Van Buskirk,
C. W. Crouse, F. L. Swain; D. A. Trolson,
Fred Gustafson, E. Scheibal, Paul Scheibal,
F. J. Kadza, W. Donnellan, P. Hagstrom,
Arthur Purvis, Roy Farnsworth, C. B. Dustin,
L. J. Pettifer, Charles Bond, L. H. Broten,
W. Canaday, L. R. Lilly, F. McNair, Dave
Shields, Ed Lindberg, Joe Tikalsky, F. Mente,
C. Gustafson, George Larson, F. Marcellino,
M. Swanson, William Griswold, O. E. Olson,
C. I. Hill, Emil Johnson, C. Peterson, F. A.
Fetterly, Earl Whitford, Thomas S. Short and
George W. Hicks, Defendants.

R. S. HOLT,

Attorney for Far West Clay Co.

June 14, 1921.

BATES & PETERSON,
Attorneys for Puget Sound Iron & Steel Works.

June 14, 1921.

S. F. McANALLY,
Attorney for C. H. Boedecker-Wm. Owens.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 5, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [81]

Acknowledgment of Service of Cross-complaint and Answer of J. P. Duke et al. and Appearance and Waiver.

We, the undersigned, hereby acknowledge service of the answer and cross-complaint of J. P. Duke and Scandinavian-American Bank of Tacoma, defendants in the above-entitled cause of action, and hereby waive the issuance of subpoena and appear herein as attorneys to the parties to this action as hereinafter specified in their behalf as to said cross-complaint, this 15th day of June, A. D. 1921.

WALTER M. HARVEY,
Attorney for Edward Miller Cornice & Roofing Company, a Corporation,

LUND & LUND,
Attorney for Gustaf Johanson.

Attorney for Washington Brick Lime and Sewer Co., a Corporation,

TEATS, TEATS & TEATS,
Attorneys for J. D. Mullins, Doing Business as
J. D. Mullins Bros.

LYLE, HENDERSON & CARNAHAN,
Attorneys for Tacoma Shipbuilding Co., a Corpora-
tion,

A. O. BURMEISTER,
Attorney for U. S. Machine & Engineering Co. Inc.,
a Corporation.

LOUIS J. MUSCEK,
Attorney for M. Kleiner, Doing Business as Liberty
Lumber and Fuel Company.

E. N. EISENHOWER,
Attorney for Ajax Electric Co.

HAYDEN, LANGHORNE & METZGER,
Attorney for Complainant.

[Indorsed]: Filed in the United States District
Court, Western District of Washington, Southern
Division. Oct. 5, 1921. F. M. Harshberger,
Clerk. By Ed M. Lakin, Deputy. [82]

**Motion of McClintic-Marshall Company to Strike
Part of Answer of Scandinavian-American
Building Company et al.**

Comes now McClintic-Marshall Company, a cor-
poration, complainant, by its attorneys, Hayden,
Langhorne & Metzger, and respectfully moves this
Court to strike from the answer of the Scandina-
vian-American Building Company, a corporation,
and Forbes P. Haskell, Jr., the duly appointed,

qualified and acting receiver of the said Scandinavian-American Building Company by leave of Court first had and obtained to be made a party defendant in this action, the following:

1. From paragraph I all that portion of the same which reads as follows:

“These defendants further allege that by reason of the failure and refusal of the complainant to deliver the structural steel in accordance with the terms of said contract, and within the period provided in said contract for the delivery of said steel, the said Scandinavian-American Building Company suffered great loss and damage and that by the terms of Article X of the Contract, marked Exhibit ‘A,’ and made a part of the complainant’s Amended and Supplemental Bill of Complaint the above matters in dispute were to be arbitrated according to the method provided in said Article X, and that the defendant, Scandinavian-American Building Company, demanded that said matters in dispute be submitted to arbitration, and that complainant refused so to do, by reason whereof these defendants deny that the complainant is entitled to recover any sum of money whatever from these defendants until the terms and conditions of said contract are fully complied with.”

2. From paragraph 2 the following:

“and allege that at the time of filing said lien, the said complainant was without right or authority [83] in law to claim, or to file or

record, any lien whatsoever against the said premises of the defendant, Scandinavian-American Building Company.”

3. All of paragraph V.

4. To strike all of paragraph I of the counterclaim.

5. To strike all of paragraph III of the counterclaim. In the event that the motion to strike all of paragraph III of the counterclaim is denied, then complainant moves to strike that part of paragraph III which reads as follows:

“That said defendant made repeated demands for the adjustment of the matters in dispute, and that complainant failed and refused and still fails and refuses to submit the same to arbitration.”

This motion to strike is based upon the ground that the matters and things moved against are insufficient either as a total or partial defense to this action.

E. M. HAYDEN,
M. A. LANGHORNE,
F. D. METZGER,
Solicitors for Complainant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 25, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [84]

**Order Granting Motion of McClintic-Marshall
Company to Strike Part of Answer of Scandi-
navian-American Bank of Tacoma et al.**

Came on this cause to be heard on this — day of June, 1921, upon the motion of the complainant to strike paragraph I of the affirmative defense as contained in the answer of Scandinavian-American Bank of Tacoma, a corporation, and J. P. Duke as Supervisor of Banks of the State of Washington, which paragraph reads as follows:

“The cross-complainants submit to the judgment of this Honorable Court, and insist that this suit is altogether unnecessary and vexatious, and that, even if the plaintiff be entitled to the sum alleged by it to be due from said defendant, the Scandinavian-American Building Company, the complainant herein is barred from asserting such rights in this action under Article X of the contract, marked Exhibit ‘A,’ and attached to its amended and supplemental bill of complaint herein, for the reason that the claims of the complainant are now and have at all times been disputed and that the complainant herein has repeatedly refused to abide by the terms of said contract, and particularly by the terms of said Article X, and submit such disputes to arbitration, as therein provided, and that the complainant herein, by reason thereof and by reason of its breaches of the said contract referred to in its amended and supplemental bill of complaint herein, has not done equity, and has not come

into this court with clean hands, and it is entitled to no equity at the hands of this court.”

After argument of counsel, and the Court being duly advised in the premises,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AND THIS DOES ORDER, ADJUDGE AND DECREE that said motion be and the same is hereby sustained, and that said paragraph above [85] set out be and the same is hereby stricken from the answer.

To the ruling of the Court and the striking of said paragraph the defendants Scandinavian-American Bank, a corporation, and J. P. Duke as Supervisor of Banks of *Banks* of the State of Washington, excepted, and their exception was noted and allowed.

Done in open court this 27th day of June, 1921.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 27, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [86]

Reply of McClintic-Marshall Company to Answer and Cross-complaint of J. P. Duke and Scandinavian-American Bank of Tacoma.

McClintic-Marshall Company, by its attorneys, Hayden, Langhorne & Metzger, for its reply to the answer and cross-complaint of J. P. Duke as Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, says:

I.

This complainant on information and belief says that it is advised that on or about the 2d day of March, 1921, the Penn Mutual Life Insurance Company, a corporation, purported to endorse and assign the note and mortgage mentioned in paragraph 14 of the first cross-bill, to J. P. Duke as Supervisor of Banks of the State of Washington, but this complainant avers and charges the fact to be that said J. P. Duke as Supervisor of Banks of the State of Washington was without any right, power or authority under the laws of the State of Washington to acquire by purchase or otherwise the said note and mortgage, or to take any assignment thereof, and that any purported transfer or assignment of said note and mortgage by the Penn Mutual Life Insurance Company to the said J. P. Duke as Supervisor of Banks of the State of Washington only operated as a payment of a debt due by the Scandinavian-American Bank of Tacoma, a banking corporation, to the said Penn Mutual Life Insurance Company, [87] as will hereafter more fully appear in this reply.

Further your complainant shows and avers the fact to be that on September 1st, 1910, the Scandinavian-American Bank of Tacoma, Washington, was the owner in fee of lots 11 and 12, block 1003, Map of New Tacoma, Washington Territory, which was filed for record in the office of the auditor of Pierce County, Washington, on February 3, 1875; that on said date J. E. Chilberg, the mortgagor mentioned in the mortgage deed of September 2, 1910,

to the Penn Mutual Life Insurance Company, was the president and one of the stockholders of the Scandinavian-American Bank of Tacoma, and it was desired by the said Scandinavian-American Bank of Tacoma to raise the sum of \$100,000, by executing a mortgage on said described property, but for banking reasons the bank did not desire to execute the mortgage in its own name, and it was thereupon agreed between the said Scandinavian-American Bank of Tacoma and the said J. E. Chilberg that said bank would, and it did, without any consideration whatever, deed to the said Chilberg, who at said time was president of said bank, lots 11 and 12, block 1003, Map of New Tacoma, and that said Chilberg would thereupon procure a loan from the Penn Mutual Life Insurance Company, a corporation, in the sum of \$100,000, and that the proceeds so to be derived from the execution of said mortgage would inure to the use and benefit of the said Scandinavian-American Bank of Tacoma, and that just as soon as the said Chilberg did execute said mortgage he and Anna M. Chilberg, his wife, would reconvey said described lots back to the said Scandinavian-American Bank of Tacoma, and accordingly and in pursuance of said agreement the said Scandinavian-American Bank of Tacoma without any consideration [88] being paid to it by the said Chilberg, deeded to said Chilberg the said described lots, and thereupon the said Chilberg and his wife executed a mortgage to the Penn Mutual Life Insurance Company, a corporation, in the sum of \$100,000, and the moneys so obtained by means of

said mortgage are the moneys and property of the said Scandinavian-American Bank of Tacoma, and were used by it for purposes unknown to this complainant; and after the execution of said note and mortgage by the said J. E. Chilberg and Anna M. Chilberg, his wife, to the said Penn Mutual Life Insurance Company, a corporation, the said J. E. Chilberg and Anna M. Chilberg, his wife, deeded said lots back to the said Scandinavian-American Bank of Tacoma, without any consideration being paid by said bank to the said Chilberg and wife, and after the execution of said note and mortgage by the said J. E. Chilberg and Anna M. Chilberg, his wife, to the Penn Mutual Life Insurance Company, a corporation, the Scandinavian-American Bank of Tacoma paid the interest on said note and mortgage and paid \$30,000 of the principal, and on September 5, 1920, the said Scandinavian-American Bank of Tacoma sent its draft for \$70,000 to the Penn Mutual Life Insurance Company, a corporation, the mortgagee, to pay and retire said note and mortgage and to discharge the premises hereinbefore described from the lien of said mortgage; but at the same time the said Scandinavian-American Bank of Tacoma requested an extension and renewal of said note and mortgage, and thereupon and in compliance with said request for an extension of time the said Penn Mutual Life Insurance Company, a corporation, granted the request of the said Scandinavian-American Bank of Tacoma, and returned the said Scandinavian-American Bank of Tacoma its draft for \$70,000, but this [89] complainant does not know

the length of time that was granted by the Penn Mutual Life Insurance Company for the extension of said note and mortgage, but alleges that under the agreement so made and entered into on September, 5, 1920, between the Scandinavian-American Bank of Tacoma and the Penn Mutual Life Insurance Company, a corporation, the said note and mortgage declared upon in this action by the said J. P. Duke as Supervisor of Banks in the State of Washington, was not due; neither was the Scandinavian-American Bank of Tacoma or J. E. Chilberg and Anna M. Chilberg, his wife, in default under any of the terms and conditions of said mortgage deed.

Further replying to the first cross-bill contained in the answer of the said J. P. Duke as Supervisor of Banks of the State of Washington, and the Scandinavian-American Bank of Tacoma, this complainant alleges and avers the following facts: Some time during the latter part of the year 1919, the exact date not being known to complainant, the Scandinavian-American Bank of Tacoma and its officers and directors conceived the plan of razing the building then situated on lots 11 and 12, block 1003, Map of New Tacoma, and erecting thereon a sixteen story structure, at an approximate cost of \$1,200,000, but the capital, surplus and resources of the said Scandinavian-American Bank of Tacoma would not permit said bank to expend that amount of its money in the construction of a new building, as the cost therefor would be in excess of thirty per cent of its capital, surplus, and undivided profits, and would constitute a violation of the banking laws

of the State of Washington, unless the consent of the State Bank Commissioner could first be obtained, and said bank and its officers, well knowing that the consent of the State Bank [90] Commissioner could not be obtained for such a purpose, thereupon conceived the plan of forming a building or holding company to be known as the Scandinavian-American Building Company, and to erect said building through its agency, and thereupon the officers and directors of the Scandinavian-American Bank of Tacoma caused to be incorporated under the laws of the State of Washington a paper corporation, known as the Scandinavian-American Building Company, with a purported capital stock of \$200,000, J. E. Chilberg, president of the Scandinavian-American Bank of Tacoma, and Gustaf Lindberg, one of its directors, being the incorporators, and O. S. Larson, Jafet Lindeberg, J. E. Chilberg, Gustaf Lindberg, Charles Drury, James R. Thompson, and George G. Williamson, were named as the directors of said Scandinavian-American Building Company, all of said named persons being also directors of the Scandinavian-American Bank of Tacoma.

That after the filing in the office of the Secretary of State and County Auditor of Pierce County, Washington, of the Articles of Incorporation of the Scandinavian-American Building Company, all the capital stock of \$200,000 of the said Scandinavian-American Building Company was subscribed for by O. S. Larson, then a director of the Scandinavian-American Bank of Tacoma, and who thereafter suc-

ceeded J. E. Chilberg as president of the Scandinavian-American Bank of Tacoma, excepting one share each that was issued in the name of the directors of the Building Company, who immediately endorsed the certificate of stock so issued to them in blank, and placed the same in charge of the Scandinavian-American Bank of Tacoma. That neither the said O. S. Larson, who subscribed for all of the capital stock of said Scandinavian-American Building [91] Company, except the seven shares issued to the persons named as directors, nor the persons to whom one share each was issued, paid one dollar of their purported subscription.

Further your complainant shows and avers the facts to be that the said Scandinavian-American Bank of Tacoma desired to acquire title to lot 10 of block 1003, Map of New Tacoma, which adjoins lots 11 and 12 of said block 1003, and erect the new building on all of said described lots; that the title to lot 10, block 1003, was in "Drury the Tailor, Inc.," who held the title thereto for the sole benefit and use of Charles Drury, who at the time was one of the directors of the Scandinavian-American Bank of Tacoma, and after the incorporation of the Scandinavian-American Building Company was chairman of the board of directors of the Building Company, and thereupon said Scandinavian-American Bank paid to the said Charles Drury the sum of \$65,000 for said lot 10, block 1003, Map of New Tacoma, and "Drury, the Tailor, Inc.," at the request and instigation of the said Charles Drury, executed a deed to said described lot to the Scandinavian-American

Building Company, the said building company being named as the grantee at the request and instance of the said Scandinavian-American Bank of Tacoma, who paid the purchase price for said lots; and after Drury the Tailor, Inc., conveyed said lot 10, block 1003, Map of New Tacoma, to the Scandinavian-American Building Company, the said Scandinavian-American Bank of Tacoma on, to wit, February 28, 1920, without any consideration whatever, conveyed to the Scandinavian-American Building Company lots 11 and 12, block 1003, Map of New Tacoma.

Complainant further shows that after the incorporation and organization of the Scandinavian-American Building [92] Company, which was as heretofore alleged incorporated and organized at the instigation of the Scandinavian-American Bank of Tacoma, its officers and agents, and after having deeded and caused to be deeded without any consideration moving to it from the said Scandinavian-American Building Company the lots 10, 11 and 12, block 1003, Map of New Tacoma, said Scandinavian-American Bank of Tacoma, through the agency of the Scandinavian-American Building Company, commenced the construction of a large sixteen-story steel structure on said lots, and in the course of construction it paid out large sums of money from its vaults for such purpose, and continued so to do until on or about January 15, 1921, when it became impossible for the said bank to advance further funds to pay for the material and labor used in the construction of said building, and thereupon the

said Scandinavian-American Bank of Tacoma was found and declared to be insolvent by the Banking Department of the State of Washington, and all its property and assets were taken in charge by the State Banking Commissioner of the State of Washington;

WHEREFORE by reason of all of which this complainant says the note and mortgage executed by the said J. E. Chilberg and Anna M. Chilberg, his wife, in the sum of \$100,000, of which note and mortgage J. P. Duke, State Supervisor of Banks of the State of Washington, now claims to be the assignee, and which he is attempting to foreclose, never was the debt or obligation of the said J. E. Chilberg or Anna M. Chilberg, his wife, but was at all times the debt and obligation of the said Scandinavian-American Bank of Tacoma, which fact was well known to the said J. P. Duke as Supervisor of Banks of the State of Washington, and his predecessor in office, prior [93] to the assignment of said note and mortgage by the said Penn Mutual Life Insurance Company, a corporation, to the said Duke, which assignment operated only as the payment and discharge of a debt and obligation of the Scandinavian-American Bank of Tacoma.

For reply to the second cross-bill as contained in the answer of the said J. P. Duke, Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, this complainant says:

That it has no knowledge whatever as to whether or not the Scandinavian-American Building Com-

pany agreed to execute and deliver to the Scandinavian-American Bank of Tacoma bonds of the value of \$350,000 as set forth in paragraph 2 of the second cross-complaint, and it has no knowledge sufficient to form a belief as to whether or not the said Scandinavian-American Building Company agreed to deliver to the said Scandinavian-American Bank of Tacoma the said bonds within a period of four months or at all, and it has no knowledge or information sufficient to form a belief as to the alleged agreement between the said Scandinavian-American Building Company and the said Scandinavian-American Bank of Tacoma, referred to and set forth in said paragraph of the second cross-bill, and it has no knowledge as to its terms as attempted to be set forth therein, wherefore it denies all of the allegations of said paragraph 2.

Complainants says it has no knowledge or information sufficient to form a belief as to the agreement referred to in paragraph 3 of the second cross-complaint was [94] not put on record in reliance upon the alleged agreement of contractors furnishing labor and material, whereby their right to file a lien was waived, and this complainant alleges and avers the fact to be that it never in its contract for the furnishing of material to the Scandinavian-American Building Company waived its right to claim a lien, all of which will more fully appear by a reference to said contract, which is set out as Exhibit "A" to the amended and supplemental complaint filed herein, which contract between complainant and the said Scandinavian-American

Building Company of Tacoma was entered into on February 5, 1920, long prior to the alleged agreement between the Scandinavian-American Building Company, a corporation, and the Scandinavian-American Bank of Tacoma, set forth in paragraph 3 of the second cross-bill.

Further replying to said second cross-bill this complainant admits that the title to lot 10 block 1003, Map of New Tacoma, referred to in paragraph 2 was in "Drury the Tailor, Inc.," and that "Drury the Tailor, Inc.," conveyed said lot to the Scandinavian-American Building Company, and that the title to lots 11 and 12 in block 1003, Map of New Tacoma was in the Scandinavian-American Bank of Tacoma, and that the said bank conveyed the said lots to the said Building Company as set forth in paragraph 2 of said second cross-bill, but as to whether or not the said lots were deeded to said Building Company in consideration of the agreement of the Building Company to deliver the bonds therein referred to to the said bank, it is without any knowledge or information sufficient to form a belief; and it is without any knowledge or information sufficient to form a belief as to whether or not it was a part and parcel of the agreement between the [95] said bank and the said building company, and it has not knowledge or information sufficient to form a belief as to whether a first mortgage in the sum of \$600,000 was to be executed by the said building company covering all of said lots in accordance with the terms of the alleged agreement between the said building company and the said

bank; and it has not knowledge or information sufficient to form a belief as to whether a mortgage in the sum of \$750,000 was to be executed and delivered as a second mortgage on said described premises, and it has no knowledge or information sufficient to form a belief as to whether or not the agreement referred to in said paragraph as Exhibit "A" was actually made between said bank and the said building company, and it never had any knowledge of the existence of said alleged agreement until the filing of the answer in this action.

Further replying to said second cross-bill, this complainant alleges and avers the fact to be that on the 5th day of February, 1920, it entered into a contract with the Scandinavian-American Building Company of Tacoma, Washington, whereby it agreed to furnish and deliver to the said Scandinavian-American Building Company the structural steel work for the building to be erected by the said Scandinavian-American Building Company on the premises described as lots 10, 11, and 12, block 1003, Map of New Tacoma, the terms and conditions of said contract being known not only to the officers and agents of the building company but to the said Scandinavian-American Bank of Tacoma, its officers and agents as well. That between the 22d day of May, 1920, and the 21st day of October, 1920, this complainant furnished material in strict accordance with the terms and conditions of its [96] contract to the Scandinavian-American Building Company of the value of \$263,437.54, no part of

which was ever paid, save and except the sum of \$86,805.17, and that amount was paid according to the best knowledge and information of your complainant by the Scandinavian-American Bank of Tacoma. That on October 21, 1920, there being due to your complainant from said Scandinavian-American Building Company the sum of \$176,632.37, it filed a notice of claim of lien in the office of the auditor of Pierce County, Washington, claiming a lien on said lots 10, 11 and 12, block 1003, Map of New Tacoma, and on the building erected thereon, a copy of which notice of lien is attached to the amended and supplemental bill of complaint in this case, marked Exhibit "B."

Complainant further alleges that at the time it furnished the material hereinbefore referred to it had no notice or knowledge whatever of the agreement alleged to exist between the Scandinavian-American Building Company and the Scandinavian-American Bank of Tacoma, set forth in the second cross-bill, and it alleges that its said lien is prior to any right of the said Scandinavian-American Bank of Tacoma, and the said John P. Duke, as Supervisor of Banks of the State of Washington, under and by virtue of said alleged contract, so set forth in the second cross-bill of complaint.

Complainant for its reply to the third cross-bill of complaint as contained in the answer of the said J. P. Duke as Supervisor of Banks of the State of Washington, and the Scandinavian-American Bank of Tacoma, a corporation, alleges that it has no knowledge or information sufficient to form a belief

as to whether or not the Scandinavian-American Building [97] Company obtained from the Metropolitan Life Insurance Company any agreement or promise to loan to said Scandinavian-American Building Company the sum of \$600,000 on the lands and premises described in paragraph 2 of the third cross-bill, and it further says that it has no knowledge or information sufficient to form a belief as to whether or not one G. Wallace Simpson represented to the Scandinavian-American Building Company or to any of its officers or agents, that he could or would pledge the mortgage therein referred to as security to obtain money as the work of the building then being constructed by the said Scandinavian-American Building Company progressed, which money or advances were to be repaid to the lenders out of the money expected to be obtained on a mortgage from the said Metropolitan Life Insurance Company when the building was completed, and it therefore denies all of the allegations contained in said paragraph 2.

Complainant denies that the Scandinavian-American Building Company executed and delivered to the said G. Wallace Simpson the note referred to in paragraph 3 of the third cross-bill, in accordance with the agreement therein referred to, and it also denies that said building company executed said note in the due exercise of the powers and authority in that behalf by it possessed, and it also denies that due corporate action was first had for the purpose of making, executing and deliver-

ing the said note as set forth in paragraph 3 of the said third cross-bill.

Complainant also denies that the Scandinavian-American Building Company made, executed and delivered to the said G. Wallace Simpson the mortgage referred to in paragraph 4 of the said third cross-complaint in the due exercise [98] of the powers and authorities by it in that behalf possessed, and it denies that it was executed after corporation action has been first had in respect thereto.

Complainant denies that the Scandinavian-American Building Company commenced the erection of the sixteen-story building referred to in paragraph 7 of the third cross-bill, pursuant to the contracts therein referred to. It also denies that all of the contracts providing for the furnishing of material and labor in the construction of said building contained a provision whereby the right of the person, firm or corporation furnishing labor or material waived his or its right to file a lien, but on the contrary this complainant alleges that its contract set out as Exhibit "A" to the amended and supplemental bill of complaint filed herein, contains no provision whereby this complainant waived its right to file or claim a lien against said building and the premises on which it is situated for material furnished.

Complainant says that whatever sums of money might have been advanced or loaned by the Scandinavian-American Bank of Tacoma to the Scandinavian-American Building Company was not advanced or loaned on the strength or security of the

mortgage alleged to have been made by the Scandinavian-American Building Company to the said G. Wallace Simpson, and this complainant in this connection further alleges that it was contemplated by both the building company and the bank at the time it was decided to erect a sixteen-story steel building on the premises hereinbefore described, that the cost thereof would exceed the sum of \$1,000,000, and that the said Scandinavian-American Bank of Tacoma would be compelled to advance a large sum of money in addition to what might be obtained from [99] the mortgage by the building company to Simpson; and it affirmatively denies that in making any alleged advances referred to in said paragraph the said Scandinavian-American Bank of Tacoma fulfilled the agreement of the said G. Wallace Simpson, therein referred to, to the extent of \$432,822.99, or any other sum.

Further answering said third cross-bill, this complainant alleges and avers the fact to be that the note and mortgage for \$600,000 alleged to have been executed by the Scandinavian-American Building Company to the said G. Wallace Simpson was executed if at all by the president and secretary of the said Scandinavian-American Building Company without any power or authority so to do from the trustees or stockholders of said Scandinavian-American Building Company, and that the execution of the said note and mortgage was not made or performed in pursuance of any power or authority conferred on the said president and secretary of the said Scandinavian-American Building Com-

pany by the vote of a majority or a quorum of the trustees of the Scandinavian-American Building Company at any meeting of the said trustees lawfully assembled, or otherwise, and that the same is therefore invalid and void, as was well known by the said Scandinavian-American Bank of Tacoma at the time it took the alleged assignment of the said note and mortgage from the said G. Wallace Simpson.

Complainant further alleges that the alleged note for \$600,000 and the mortgage securing the same referred to in said third cross-bill were delivered to the said G. Wallace Simpson as agent only for the said Scandinavian-American Building Company, for the express purpose of enabling him to [100] sell and dispose of the same to secure the money therefor, and that the said G. Wallace Simpson had no power or authority to dispose of, sell, assign, transfer or pledge the said note or mortgage except for the purpose of obtaining money therefor. That the said Scandinavian-American Bank of Tacoma well knew the purpose for which the said note for \$600,000 and the mortgage securing the same were delivered to the said Simpson, and well knew that he had no power or authority to sell, assign, or transfer the same except for money received, and this complainant alleges that when the Scandinavian-American Bank of Tacoma took the assignment of said note and mortgage from the said Simpson no money or consideration whatever was paid by the said Scandinavian-American Bank of Tacoma or anyone else on its behalf to the said

G. Wallace Simpson. Complainant further alleges that the said note to the said Simpson and the mortgage purporting to secure the same were executed and delivered to him without any consideration therefor, and during the time the said note and mortgage were held by the said Simpson neither money nor labor nor anything else of value were paid to or received by the said Scandinavian-American Building Company therefor.

Further complainant alleges that some time during the year 1919, the exact date not being known to your complainant, the Scandinavian-American Bank of Tacoma conceived the plan of erecting a large sixteen-story steel building on lots 10, 11 and 12 in block 1003, Map of New Tacoma, but the building planned by it was so costly and expensive that the said bank could not erect the same without investing in it a sum in excess of thirty per cent of its capital, surplus and undivided profits, which would be in [101] violation of the statutes of the state of Washington, unless the consent of the Bank Commissioner thereto was first obtained, and knowing that the consent of the Bank Commissioner could not be obtained thereto, and which consent this complainant on information and belief alleges that he refused, said Scandinavian-American Bank of Tacoma then determined to do indirectly what it was prohibited by statute of the state of Washington from doing directly, and thereupon formed the scheme to erect the said building through the agency of a corporation formed and owned by its own officers, which scheme or plan as developed and carried

out is more fully set forth in complainant's reply to the first cross-bill, set up in the answer of J. P. Duke as Supervisor of Banks of the State of Washington, and the Scandinavian-American Bank of Tacoma, to which reference is hereby made, and complainant now alleges the allegations and statements contained therein and make the same a part of this, its reply to the third cross-bill, as fully and to all intents and purposes as though the same were set forth herein verbatim.

This complainant for its further reply to the third cross-bill, says, that on the 5th day of February, 1920, it entered into a contract with the Scandinavian-American Building Company, wherein and whereby it agreed for a stated consideration to furnish and deliver to the said Scandinavian-American Building Company the structural steel work for the building that said building company was about to erect on lots 10, 11 and 12, block 1003, Map of New Tacoma, and that the terms and conditions of said contract were well known not only to the officers and agents of the Building Company, but to the Scandinavian-American Bank of Tacoma its officers and agents, as well. [102] That at the time said contract just referred to was executed the only apparent lien or encumbrance against the premises on which it was proposed to erect said building was a mortgage of \$100,000, on lots 11 and 12, block 1003, on which the sum of \$30,000 had been paid, executed by J. E. Chilberg and Anna M. Chilberg, his wife, to Penn Mutual Life Insurance Company, a corpora-

tion, and this complainant has no knowledge of the alleged mortgage of \$600,000 from the Scandinavian-American Building Company to the said G. Wallace Simpson, which was not executed until March 10, 1920, long after the contract between your complainant and the Scandinavian-American Building Company had been entered into, and that the said Scandinavian-American Bank of Tacoma had actual knowledge that after the execution of the contract between complainant and the Scandinavian-American Building Company this complainant had commenced to manufacture the structural steel work that was to be used in the construction of said building on the premises hereinbefore described, and it well knew that between May 22, 1920, and October 21, 1920, this complainant had delivered to the Scandinavian-American Building Company material that was actually used in the construction of the building on the lots hereinbefore described, of the value of \$263,437.54, for which it had a right to claim a lien under the statutes of the state of Washington in such cases made and provided, and that your complainant's right to a lien had attached long prior to the time when the said Scandinavian-American Bank of Tacoma received an assignment of the \$600,000 note and mortgage from the said G. Wallace Simpson, and the lien of said mortgage had not attached and no money or other consideration had been paid, advanced or contracted for thereunder. [103]

Further answering the first, second and third cross-bills of J. P. Duke as Supervisor of Banks

of the State of Washington, and Scandinavian-American Bank of Tacoma, so far as the same relate to the allowance of attorney's fees in the event the mortgages therein referred to are foreclosed, complainant says that the amounts claimed are grossly excessive, and that no allowance whatever should be made for attorneys' fees for the reason that the attorneys appearing for the answering defendants and cross-complainants are now being paid a salary by the said J. P. Duke as Supervisor of Banks of the State of Washington, to wind up the affairs of the defunct Scandinavian-American Bank of Tacoma.

WHEREFORE, having made full reply to the answer of the said J. P. Duke and Supervisor of Banks of the State of Washington, and Scandinavian Bank of Tacoma, this complainant prays that said cross-complaints as contained in said answer and each of them be dismissed; that said named defendants and cross-complainants take nothing thereby, and that the lien of this complainant be adjudged and decreed to be prior and superior to any and all claims and demands of the said cross-complainants and each of them in, to or against the real estate hereinbefore described, and that this complainant may have a decree foreclosing its said lien as prayed for in its amended and supplemental bill of complaint filed herein, and for such

other and further relief as to this court may seem meet and agreeable to equity and good conscience.

E. M. HAYDEN,
M. A. LANGHORNE,
F. D. METZGER,

Solicitors for Complainant. [104]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 14, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [105]

Answer and Cross-complaint of Tacoma Millwork Supply Company.

ANSWER AND CROSS-COMPLAINT OF DEFENDANTS ANN DAVIS and R. T. DAVIS, Jr., et al, Copartners Doing Business as TACOMA MILLWORK SUPPLY COMPANY.

To the Honorable E. E. CUSHMAN, Judge of the District Court of the United States, for the Western District of Washington.

Ann Davis and R. T. Davis, Jr., as executors of the Estate of R. T. Davis, deceased; R. T. Davis, Jr., Lloyd Davis; Harry L. Davis; George L. Davis; Maude A. Davis; Marie A. Davis; Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company answer the bill of complaint on file in this case and bring this their cross-complaint against the Scandinavian-American Build-

ing Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of the said State; Scandinavian-American Bank, a corporation organized under and by virtue of the laws of the State of Washington, and a citizen of the said state; G. Wallace Simpson, a citizen of the State of Missouri; Metropolitan Life Insurance Company, a corporation duly organized under and by virtue of the laws of the State of New York and a citizen of said State; Penn Mutual Life Insurance Company, a corporation organized under and by virtue of the laws of the State of Pennsylvania and a citizen of said State; P. Claude Hay, State Bank Commissioner for the State of Washington and a citizen of the State of Washington; Forbes P. Haskell, Deputy State Bank Commissioner for the State of Washington, and a citizen of the State of Washington; McClintic-Marshall Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania and a citizen of said state. [106]

Thereupon these answering defendants and cross-complainants do hereby answer the bill of complaint of said plaintiff McClintic-Marshall Company and bring their bill by way of cross-complaint against the parties above named as follows:

I.

For answer to paragraphs I, II, III, IV, V, VI, VII, VIII and IX of said complaint these answering defendants admit the same.

II.

For answer to paragraphs X and XI of said complaint these answering defendants have not the information or belief as to the matters and things therein contained and therefore deny the same excepting that the grounds and premises therein referred to are necessary for the construction and convenient use of said building.

III.

For answer to paragraph II of said complaint these answering defendants have not information or belief as to the matters and things therein contained and therefore deny the same.

IV.

For answer to paragraph XIII of said complaint these answering defendants admit the same excepting that portion thereof relating to the claims of these answering defendants and cross-complainants.

V.

For answer to paragraph XIV of said complaint (erroneously styled IX) these answering defendants admit the reasonableness of the attorney's fee expressed in said paragraph in the event that a lien in the amount prayed for by plaintiff is allowed. [107]

These answering defendants and cross-complainants specifically deny each and every allegation of said bill of complaint not herein now specifically admitted.

By way of cross-complaint allege as follows:

I.

That R. T. Davis, Jr., Lloyd Davis, Harry L.

Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, are copartners doing business under the name and style of Tacoma Millwork Supply Company, and that with the exception of Hattie Davis Tennant, who is a citizen of the State of California, these cross-complainants are each and all of them citizens of the State of Washington.

II.

That the Scandinavian-American Building Company is a corporation organized and existing under the laws of the State of Washington, and is a citizen of said State.

III.

That the Scandinavian-American Bank is a corporation organized and existing under the laws of the State of Washington, and is a citizen of said State.

IV.

On information and belief the defendant G. Wallace Simpson is a citizen of the State of Missouri.

V.

That the defendant, P. Claude Hay, is the duly appointed, qualified and acting State Bank Commissioner for the State of Washington, and the defendant Forbes P. Haskell is the duly appointed, qualified and acting Deputy State Bank Commissioner for [108] the State of Washington, and the defendant Forbes P. Haskell is the duly appointed, qualified and acting Deputy State Bank Commissioner for the State of Washington, and

the said P. Claude Hay and the said Forbes P. Haskell are citizens of the State of Washington.

VI.

That Penn Mutual Life Insurance Company is a corporation organized and existing under the laws of the State of Pennsylvania, and is a citizen of said State.

VII.

That Metropolitan Life Insurance Company is a corporation organized and existing under the laws of the State of New York, and is a citizen of said State.

VIII.

That McClintic-Marshall Company is a corporation organized and existing under the laws of the State of Pennsylvania, and is a citizen of said State.

IX.

That said G. Wallace Simpson was acting in the interest of and as a conduit for the Metropolitan Life Insurance Company in the execution and filing of that certain mortgage hereinafter referred to as having been executed by the Scandinavian-American Building Company, a corporation, to said G. Wallace Simpson.

X.

Further your cross-complainants show that the matter and amount recited in their cross-complaint, exceed, exclusive of costs, the sum or value of \$3,000.

XI.

That at all the times hereinafter and in this cross-complaint [109] mentioned the defendant Scandinavian-American Building Company, a cor-

poration, was and now is the Owner of Lots Ten (10), Eleven (11) and Twelve (12), in Block One Thousand and Three (1003), as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3, 1875.

XII.

That on or about the 28th day of February, 1920, your cross-complainants entered into written contracts with defendant Scandinavian-American Building Company, true copies of which are hereto attached and marked Exhibits "A," "B" and "C," Exhibit "A" comprising contract for the delivery of general millwork for the building to be erected upon the property hereinbefore described, Exhibit "B" comprising a contract for the millwork with respect to bank fixtures, and Exhibit "C" having reference to the erection of the millwork hereinbefore referred to as distinguished from its manufacture.

XIII.

That thereafter and in accordance with the terms of said main or manufacturing contract, namely, Exhibit "A," and said bank fixtures contract, namely, Exhibit "B," your cross-complainants between the 28th day of February, 1920, and January 17, 1921, manufactured and delivered to said Scandinavian-American Building Company a total of manufactured material specially designed for the building to be erected and being erected upon the premises hereinbefore described, and not otherwise

useable, a total in value of \$44,548.41, being the reasonable and agreed value of said goods.

That your cross-complainants are and were at all times ready to fully complete said contract and that a reasonable [110] profit on the remaining portion of contracts "A" and "B" is and would be Three Thousand (\$3,000) Dollars and that your cross-complainants having no security other than as provided by the lien statutes of the State of Washington, did on the 19th day of January, 1921, duly file their claim upon said premises hereinbefore described, having first duly verified said lien and properly ensealed it and said lien was so drawn as to be entitled to be placed of record and that said lien was duly recorded as Auditor's file No. 585424 in the office of the Auditor for Pierce County, it being numbered in such manner in accordance with the system in vogue in said office for the numbering of liens.

XIV.

Further your cross-complainants show that all of said material so manufactured, sold and delivered to said Scandinavian-American Building Company is necessary and useable solely and alone and is to be used in the completion of that certain sixteen-story building situate upon the lands and premises hereinbefore described, all of said lands and premises being necessary for the construction and convenient use of said building.

XV.

Your cross-complainants further show that on, to wit, January 17, 1921, there being then due from

said Scandinavian-American Building Company to your cross-complainants the sum of \$44,548.41, with interest from said date at the rate of six per cent per annum, and the said Scandinavian-American Building Company having definitely declined and having theretofore failed and refused to pay for the amounts due upon said contract and admitting its inability to pay, and these your cross-complainants being without any security for the payment [111] of said money excepting as provided by the lien statutes of the State of Washington, duly filed and recorded with the County Auditor for Pierce County, Washington, being the county in which said property is situate, their claim of lien duly verified by oath and properly ensealed, claiming therein the full value of the said manufactured material, which lien is of record as Auditor's file number 585115 in accordance with the system of numbering liens in vogue in the office of the Auditor of Pierce County, Washington, the said lien being in such form and so drawn as to entitle it to be placed of record in accordance with the statutes in such cases made and provided.

XVI.

That the contract Exhibit "C," being a contract for the erection of the two several characters of mill work hereinbefore referred to as being manufactured under Exhibits "A" and "B" attached hereto and made part hereof, was entered into contemporaneously with the said other or remaining contracts by these your cross-complainants, and formed and is a part of the consideration entering

into the two remaining contracts and was all one and the same transaction, each contract being a consideration for the entry into the other, and that a reasonable profit to be derived out of said contract known as Exhibit "C" hereto attached, being the erection contract, would be and is the sum of Ten Thousand Five Hundred (\$10,500.00) Dollars, and that the said cross-complainants have no security for payment of said amount just mentioned except as given them by the lien statutes of the State of Washington in such cases made and provided, and that they did execute and caused to be filed of record in the office of the County Auditor of Pierce County their lien in the amount of \$10,500.00 describing the [112] property hereinbefore referred to and asking a lien thereon for the amount mentioned, having duly verified said lien and it being property ensealed in accordance with the Statutes of the State of Washington and being in such form and so drawn as to entitle it to be placed of record, being recorded as Auditor's file Number 585425 in accordance with the system of numbering liens in vogue in the office of the Auditor of Pierce County, Washington.

XVII.

Further, that the said Scandinavian-American Building Company is wholly insolvent. That there are certain assets of said company that are in danger of dissipation. That the building being erected is unfinished even as to its structural steel content, is open to the weather and will rapidly deteriorate, depreciating the value of the liens thereon filed,

and that it is necessary that a receiver be appointed to properly care for the assets of said building company and in particular protect the said building and to advise with this Court upon some plan for its completion or disposal.

XVIII.

Your cross-complainants further show and represent to this Court that they have been compelled to employ attorneys for the purpose of protecting and preserving their interest and enforcing their said liens and that under and by virtue of Section 1141 of Remington & Ballinger's Code and Statutes of the State of Washington they are entitled to an allowance of a reasonable attorney's fee which they allege and aver to be the sum of \$4,500.00.

XIX.

Your cross-complainants respectfully show to this Court [113] that Scandinavian-American Bank, a corporation, one of defendants herein; Scandinavian-American Building Company, a corporation, one of defendants herein; G. Wallace Simpson, one of defendants herein; Penn Mutual Life Insurance Company, a corporation, an additional defendant herein; Metropolitan Life Insurance Company, a corporation, one of the additional defendants herein; P. Claude Hay and Forbes P. Haskell, State Bank Commissioner and Deputy Bank Commissioner respectively, defendants herein, claim some right, title, estate or interest in said premises but whatever the nature of said right, title, estate or interest or claim may be, if any, the same is junior, subsequent and inferior to the lien of said cross-

complainants, with the exception of the lien of the Penn Mutual Life Insurance Company which your cross-complainants herein admit is a superior, prior and first lien upon said premises, being in the nature of a first mortgage.

In consideration whereof, and forasmuch as your cross-complainants are remediless in the premises according to the strict rule of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable, your cross-complainants therefore pray the decree of this Honorable Court:

I.

That the plaintiff and remaining defendants and each of them may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were herein expressed, and they thereunto particularly interrogated, but not under oath, answer under oath being hereby expressly waived. [114]

II.

That your cross-complainants may have a judgment against the defendant Scandinavian-American Building Company for the sum of \$44,548.41 plus \$3,000, with interest thereon at the rate of six per cent per annum from date hereof; for the sum of \$10,500.00 with interest thereon at the rate of six per cent per annum from date hereof, together with the further sum of \$4,500.00 as and for attorneys' fees for the foreclosure of their said liens, and for all their costs and expenses herein incurred, and to

be incurred, and that the same and the whole thereof be adjudged a first and valid lien against the lands and premises hereinbefore described. Further your cross-complainants pray that said lands and premises and the building thereon situated be adjudged and decreed to be sold in satisfaction of the amount so found due to your cross-complainants according to law and the practice of this court, and that the proceeds of such sale be applied in payment of the costs of these proceedings and sale and reasonable attorneys' fees in the sum of \$4,500.00, and your said cross-complainants' claim amounting to the sum of \$48,048.41, besides interest as hereinbefore specified.

Further your cross-complainants pray that said plaintiff and the remaining defendants and all persons claiming under them or either of them subsequent to the filing and recording of your cross-complainants' liens in the office of the Auditor of Pierce County, Washington, either as purchasers or encumbrancers, lienors or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in the said premises and every part thereof, and that they may have a judgment and execution against the defendant Scandinavian-American Building Company for any deficiency which may remain after applying all the proceeds of the sale of said premises [115] properly applicable to the satisfaction of their said judgment. That your cross-complainants or any other parties to this suit may become a purchaser at said sale, and that the officer executing the sale shall execute

and deliver the necessary conveyances to the purchaser or purchasers, and that said purchaser or purchasers at said sale may be let into the possession of said premises.

III.

That your cross-complainants may have such other and further relief in the premises as may be just and equitable and as your Honor may deem just, and the appointment of a receiver as indicated.

May it please your Honor to grant to your cross-complainants writs of subpoena, to be directed to the plaintiff and to the remaining defendants, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named to be and appear before your Honor in this Honorable Court, then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide and perform such other and further orders or decrees as to your Honor shall seem meet.

FLICK & PAUL,

Attorneys for Ann Davis and R. T. Davis, Jr., as
Executors of the Estate of R. T. Davis, De-
ceased; R. T. Davis, et al., Copartners Doing
Business Under the Name and Style of Tacoma
Millwork Supply Co. [116]

United States of America,
Western District of Washington,
Southern Division,—ss.

R. T. Davis, being duly sworn, deposes and says:
That he is one of the copartners of the Tacoma

Millwork Supply Company and acting agent of the remaining copartners; that he has read the foregoing answer and cross-complaint, knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

R. T. DAVIS.

Subscribed and sworn to before me this 19th day of January, 1921.

Notary Public in and for the State of Washington,
Residing at Tacoma. [117]

Exhibit "A."

TACOMA MILLWORK SUPPLY CO.

Tacoma, Wash., Feb. 17th, 1920.

Mr. Frederick Webber, Archt.

Tacoma, Wash.

Dear Sir:

Re: 16 Story Scandinavian American Bank Bldg.

Confirming our verbal conversation of this morning, we will agree, to furnish you with all of the "Millwork" for the above building, (with the exception of Bank Quarters) and as per your plans and specifications, and the following understanding, for the sum of Sixty-five Thousand Dollars (\$65,000.00) net cash.

It is understood by the above general term "Millwork" that we furnish no flooring, glass, or hardware, or metal covered work.

It is also understood that the material for the exterior window frames and sash shall be of V. G. Fir. The interior trim thruout to be of Philippine Mahogany, with the doors veneered with the harder species on stiles and rails, with panels of Honduras Mahogany.

It is our suggestion that the Painter's primeing be done by you at our factory, before delivery, as without this precaution we could not guarantee the work.

As to the terms of payment, we would expect 75% of the estimated value of the work delivered, or accepted for delivery, to be paid us on or before the 10th of the current month, for all of the previous month's work, and the balance of 25% retained to be paid within 30 to 60 days of completion and acceptance of the entire contract. Bond to be furnished by Owner.

Respectfully submitted,

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS,

Jr. Mgr. [118]

Exhibit "B."

THIS AGREEMENT, made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Tacoma Millwork Supply Co. hereinafter called the "Contractor," party of the second part.

WITNESSETH:

WHEREAS, the said Scandinavian-American

Building Company, Owner, is about to begin the erection of a 16-story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003), as shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said Tacoma Millwork Supply Co. is desirous of entering into a contract with the said Scandinavian American Building Company, Owner, to furnish

The exterior window frames together with the transome sash, for the First floor Banking Quarters, as per the plans and details, for the sum of Nineteen Hundred Fifty-seven Dollars, \$1957.00. Also to furnish labor of fitting the sash in the frames and putting on the interior mouldings, at an extra cost of \$171.00, all as per estimates of Feb. 25th, attached hereto.

under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

NOW THIS AGREEMENT WITNESSETH,

ART. I. That in consideration of the agreements herein contained, the Owner agreed to pay to the Contractor, the sum of Two Thousand One Hundred Twenty-eight (\$2128.00) Dollars in installments as hereinafter stated. Said payments, however, in no

way lessening the total and final responsibility of the [119] Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows:

75% monthly to be paid in cash, upon the 15th, of each month, provided estimates are furnished to the Architect, on or before the first of each month, of the estimated value of the work delivered and erected, and the balance of 25% to be paid within 30 to 60 days from completion and acceptance of the "Millwork" erection covered by this contract.

ART. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans and specifications made by said Architect, which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of any one, so as to complete the building at the earliest [120] possible moment.

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building without notice from any one, and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz:

All of the work aforementioned to be delivered and erected so that the whole can be completed within ten (10) months from the date of this contract, and to be delivered and erected as fast as the building will permit.

ART. VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty wholly beyond

the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay.

ART. VII. And in case of default in any part of the said work within the times and periods above specified, the Contractor hereby promises and agrees to pay the Owner, and the Owner may deduct from any amount coming to the Contractor the sum of Fifty (\$50.00) dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the Owner in the completion of the work [121]

ART. VIII. Any imperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials or workmanship, shall, upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

ART. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the premises, caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives, and if not removed promptly by the Contractor, the Owner is hereby

authorized to remove the same at the expense of the said Contractor, and to deduct the cost thereof from any balance that may be due and owing him.

ART. X. And should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect or the Owner, the latter shall be at liberty after two days' written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract; and if the Architect or the Owner shall certify that such refusal, neglect or failure is sufficient ground for action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession [122] for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, the latter shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work said excess shall be paid

by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor.

ART. XI. And the Owner reserved the right, that if there be any omission or neglect on the part of the said Contractor of the requirements of this agreement and the drawings, plans and specification, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate, free, and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; and any amount due the Contractor by reason of work done or materials furnished prior to the forfeiture of this contract shall be retained by the said Owner until the full completion and acceptance of the building upon which said work has been done or said material furnished, at which time the said Owner, after deducting [123] all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

ART. XII. And the Contractor further covenants, promises and agrees that he will make no charge for any extra work performed or materials fur-

nished in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

ART. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry sufficient liability and workmen's compensation insurance and to enter in and defend the Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages; or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under, or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

ART. XIV. And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all right to any mechanic's claim or lien against said premises, and hereby expressly agrees not to file any claim or [124] lien

whatsoever against the premises involved in this contract.

ART. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by the contract.

ART. XVI. And any and all work that may be cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts.

ART. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

ART. XVIII. It is hereby further mutually covenanted, promised and agreed, by and between the said parties, that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans and specifications hereinbefore referred to, or any other matter in connection herewith, the same shall be referred to three

arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of a majority of them in the matter, shall be final and binding upon them.
[125]

ART. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of One Thousand Dollars, (\$1000.00), conditioned for the true and faithful performance of this contract on the part of the Contractor.

ART. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except by the mutual consent of the parties endorsed hereon in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby certifies that before the execution of this agreement he examined all the plans and specifications prepared in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties have

hereunto set their hands and seals the day and year first above written.

SCANDINAVIAN-AMERICAN BUILD-
ING CO.

By CHARLES DRURY,
Its President.

J. V. SHELDON,
Its Secretary.

TACOMA MILLWORK SUPPLY CO.,

By R. T. DAVIS, Jr.,

G. L. DAVIS,
Contractor. [126]

THIS AGREEMENT made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the owner, party of the first part, and Tacoma Millwork Supply Company, hereinafter called the contractor, party of the second part.

WITNESSETH.

WHEREAS, the said Scandinavian-American Building Company, Owners is about to begin the erection of a 16-story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11), and Twelve (12) in Block One thousand three (1003), as shown and designated on a certain plat entitled, "Map of New Tacoma, W. T.," of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said Tacoma Millwork Supply Co. is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish all of the interior millwork with the exception of Bank Quarter; also, all of the exterior window and door frames, for the sum of Sixty-five thousand (\$65,000) Dollars.

All plaster grounds to be furnished at price of \$8.00 per thousand lineal feet on $\frac{3}{4} \times 1\frac{5}{8}$ grounds, according to estimates furnished by party of the second part, dated Feb. 17th and 18th, 1920, under and subject to all terms, limitations and conditions contained in the plans and specifications hereinabove referred to.

NOW THIS AGREEMENT WITNESSETH,

ART. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor the sum of Sixty-five Thousand (\$65,000.00) Dollars in installments as hereinafter stated. Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of defective work or improper material.

Although it is definitely understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the contractor, it is stipulated that payment shall be made as follows:

75% monthly to be paid in cash upon the 15th of each month, provided estimates are furnished to

the Architect on or before the first of each month, of the estimated value of the work delivered and erected, and the balance of 25% to be paid within 30 to 60 days from completion and acceptance of the millwork material furnished and covered by this contract.

ART. II. The said Contractor hereby covenants, promises and agrees to do all the aforesaid work to be furnished and finished agreeable to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans and specifications made by said Architect, which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at [127] length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the earliest possible moment.

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building, without notice from anyone and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of the work, comprehended under this agreement by and at the time or times hereinafter stated, viz.: All the work aforementioned to be delivered and put in place so that the whole can be completed in ten (10) months from date of this contract, and to be delivered as fast as the building will permit.

ART. VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work, shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay.

ART. VII. And in case of default in any part of the said work within the times and periods above specified, the Contractor hereby promises and agrees to pay the owner, and the owner may de-

duct from any amount coming to the Contractor the sum of Fifty (\$50) Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the owner in the completion of the work.

ART. VIII. Any unperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials or workmanship, shall, upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

ART. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulated on the premises caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives, and if not removed promptly by the Contractor, the Owner is hereby authorized to remove the same at [128] the expense of the said contractor, and to deduct the cost thereof from any balance that may be due and owing him.

ART. X. And should the contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect or the Owner, the latter shall be at

liberty after two days' written notice to the contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract; and if the Architect or Owner shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor, and in case of such discontinuance of the employment of the Contractor, the latter shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expenses incurred by the Owner in finishing the work said excess shall be paid by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor.

ART. XI. And the Owner reserves the right, that if there be any omission or neglect on the

part of the said Contractor or the requirements of this agreement and the drawings, plans and specifications, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate, free and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; and any amount due the Contractor by reason of work done or materials furnished prior to the forfeiture of this contract, shall be retained by the said Owner until the full completion and acceptance of the building upon which the said work has been done or the said materials furnished, at which time the said Owner, after deducting all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

ART. XII. And the contractor further covenants, promises and agrees that he will make no charge for any extra work performed or materials in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

ART. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry

sufficient liability and workmen's compensation insurance and to enter in and defend the [129] Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages, or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

ART. XIV. And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all rights to any mechanic's lien or claim against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract.

ART. XV. And the Contractor shall at all times when required by the owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by this contract.

ART. XVI. And any and all work that may be cut out and omitted from this contract, during the

progress of the work, shall be allowed by the contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts.

ART. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

ART. XVIII. It is hereby mutually covenanted, promised and agreed by and between the said parties that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans and specifications hereinabove referred to, or any other matter in connection herewith, and the same shall be referred to three arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of a majority of them in the matter, shall be final and binding upon them.

ART. XIX. The Contractor shall, upon request from the owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of Thirty-two thousand (\$32,000) Dollars, conditioned for the true and faithful performance of this contract on the part of the Contractor.

ART. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except [130] by the mutual consent of the parties endorsed hereon in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby certifies that before the execution of this agreement he examined all the plans and specifications prepared in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of
SCANDINAVIAN-AMERICAN BUILD-
ING CO.

By CHARLES DRURY,
Its President.

J. SHELDON,
Its Secretary.

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.

G. L. DAVIS,
Contractor. [131]

Exhibit "B."

Tacoma, Wash., Feb. 25, 1920.

Mr. Frederick Weber, Archt.,

Tacoma, Wash.

Re: Sixteen Story Scandinavian Bank Bldg.

Dear Sir:

We will agree to furnish you with the exterior window frames, together with the transom sash, for the First Floor Banking Quarters as per the plans and our details, for the sum of \$1,957.00. This, of course, included no glass, no setting of frames, or labor erecting. However, we estimate the labor of fitting the sash in the frames and putting on the interior mouldings at \$171.00, making a total of \$2,128.00.

Respectfully yours,

TACOMA MILLWORK SUPPLY CO.,

By R. T. DAVIS, Jr.,

Manager. [132]

Exhibit "C."

THIS AGREEMENT, made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Tacoma Millwork Supply Co. hereinafter called the "Contractor," party of the second part.

WITNESSETH.

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the

erection of a 16-story building on the property situated in Pierce County, Washington, described as follows: Lot Ten (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003), as shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said Tacoma Millwork Supply Co. is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish

All of the interior "Millwork" to be erected complete, according to the plans and specifications, for the sum of Thirty Thousand Dollars (\$30,000.00).

Also to furnish complete, the bucks, as per details for the sum of Twelve Hundred Sixty-six Dollars (\$1266.00). All according to estimates furnished by the party of the second part, dated February 17th and 18th, 1920. under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

NOW THIS AGREEMENT WITNESSETH,

ART. I. That in consideration of the agreements herein contained, the Owner agreed to pay to the Contractor, the sum of Thirty-one Thousand Two Hundred Sixty-six Dollars (\$31,266.00) in installments as hereinafter stated. Said payments, [133]

however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows:

75% monthly to be paid in cash, upon the 15th of each month, provided estimates are furnished to the architect, on or before the 1st of each month, of the estimated value of the work delivered and erected, and the balance of 25% to be paid within thirty to sixty days, from completion and acceptance of the work and material covered by this contract.

ART. II. The said Contractor hereby covenants, promises and agrees to do all of the afore-said work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans and specifications made by said Architect, which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished

and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract, and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. [134] And the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the earliest possible moment.

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building, without notice from anyone, and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz.:

All of the work aforementioned to be delivered and erected so that the whole can be completed in ten (10) months from the date of this contract, and to be erected as fast as the building will permit.

ART. VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay.

ART. VII. And in case of default in any part of the said work within the times and periods above specified, the Contractor hereby promises and agrees to pay the Owner, and [135] the Owner may deduct from any amount coming to the Contractor the sum of Fifty (\$50.00) Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the Owner in the completion of the work.

ART. VIII. Any imperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials or workmanship, shall, upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

ART. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the premises, caused by the construction of his work,

at such time or times as he may be instructed by the Owner or his representatives, and if not removed promptly by the Contractor, the Owner is hereby authorized to remove the same at the expense of the said Contractor, and to deduct the cost thereof from any balance that may be due and owing him.

ART. X. And should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect or the Owner, the latter shall be at liberty after two days' written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the [136] Contractor under this contract; and if the Architect or the Owner shall certify that such refusal, neglect or failure is sufficient grounds for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, the latter shall not be entitled to receive any further

payment under this contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work said excess shall be paid by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor.

ART. XI. And the Owner reserved the right, that if there *by* any omission or neglect on the part of the said Contractor of the requirements of this agreement and the drawings, plans and specification, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate, free, and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; and any amount due the Contractor by reason [137] of work done or materials furnished prior to the forfeiture of this contract shall be retained by the said Owner until the full completion and acceptance of the building upon which said work has been done or said materials furnished, at which time the said Owner, after deducting all costs and expenses occasioned by the default of the said

Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

ART. XII. And the Contractor further covenants, promises and agrees that he will make no charge for any extra work performed or materials furnished in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

ART. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry sufficient liability and workmen's compensation insurance and to enter in and defend the Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages; or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under, or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the [138] discretion of the Owner.

ART. XIV. And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all rights to any mechanic's claim or lien against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract.

ART. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by this contract.

ART. XVI. And any and all work that may be cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts.

ART. XVII. The owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

ART. XVIII. It is hereby further mutually covenanted, promised and agreed, by and between the said parties, that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on

said building to be done, or materials to be furnished under this contract, or the plans and specifications hereinbefore referred to, or any other matter in connection herewith. [139]

Exhibit "C."

Tacoma, Wash., Feb. 18th, 1920.

Mr. Frederick Webber, Archt.

Tacoma, Wash.

Dear Sir:

Re: 16-Story Scandinavian-American Bank Bldg.

We will agree to furnish you with all of the door-bucks for the above building, as per your plans, for the sum of \$1,266.00.

We are also pleased to make you a price of \$8.00 per thousand lineal feet, on the $\frac{3}{4} \times 1\frac{5}{8}$ " plaster grounds.

The door-bucks would come plowed on the back, cut to proper lengths, and notched for beader.

Respectfully submitted,

TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.,

Mgr.

Bond to paid for by owner. [140]

Exhibit "C."

TACOMA MILLWORK SUPPLY CO.

Tacoma, Wash. Feb. 17th, 1920.

Mr. Frederick Webber, Archt.,

Tacoma, Wash.

Dear Sir:

Re: 16 Story Scandinavian-American Bank Bldg.

We will agree to furnish all of the labor and

equipment necessary, to full erect all of the "Millwork" in the above building, as per your plans and specifications and in first-class shape, for the sum of Thirty Thousand Dollars, (\$30,000.00). The fitting and placing of all hardware on the above "Millwork" is included.

It is understood that the "Owner" will set the window frames, and furnish and set the door-bucks, and grounds.

The terms of payment to be as outlined in our "Millwork" bid of even date.

Bond to be paid for by owner.

Respectfully submitted,
TACOMA MILLWORK SUPPLY CO.

By R. T. DAVIS, Jr.,

Mgr. [141]

**Reply to Answer and Cross-complaint of Tacoma
Millwork Supply Co.**

Now comes McClintic-Marshall Company, complainant, and for its reply to the cross-complaint of Ann Davis et als., says:

I.

Admits paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of said cross-complaint.

II.

Replying to paragraph XIII of said cross-complaint, this complainant says that it has no knowledge or information sufficient to form a belief as to the matters and things therein alleged, and therefore denies the same, the whole and every part

thereof, and each and every allegation therein contained, save that on or about the 19th day of January, 1921, said cross-complainants filed in the office of the County Auditor of Pierce County, Washington, their claim of lien against the lands and premises described in said notice of lien.

III.

Replying to paragraph XIV of said cross-complaint, this complainant says that it has no knowledge or information sufficient to form a belief as to the matters and things therein alleged, and it therefore denies the same, the whole and every [142] part thereof, and each and every allegation therein contained.

IV.

Replying to paragraph XV of said cross-complaint, this complainant says that it has no knowledge or information sufficient to form a belief as to the matters and things therein alleged, and it therefore denies the same, the whole and every part thereof, and each and every allegation therein contained, save and except that it admits that the said cross-complainants filed a claim of lien in the office of the County Auditor of Pierce County, Washington, against the lands and premises described in said notice of lien.

V.

Replying to paragraph XVI of said cross-complaint, this complainant says that it has no knowledge or information sufficient to form a belief as to the matters and things therein alleged, and it therefore denies the same, the whole and every part

thereof, and each and every allegation therein contained, save that this complainant admits that said cross-complainants filed a claim of lien in the office of the Auditor of Pierce County, Washington, as alleged in said paragraph.

VI.

Admits the allegations contained in paragraph XVII of said cross-complaint.

VII.

Replying to paragraph XVIII of said cross-complaint, this complainant admits that the cross-complainants have been compelled to employ attorneys, and further admits that they are entitled to a reasonable attorney's fee if they succeed in establishing a lien against the lands and premises against which said lien is claimed. [143]

For a further reply to the cross-complaint of Ann Davis et als., this complainant says: That said cross-complainants should not be allowed to claim or assert that they now have a lien in any amount whatsoever against the lands and premises described in the original cross-complaint and notices of liens, for the reason that in the contract said to have been made and entered in to on the 28th day of February, 1920, between Scandinavian-American Building Company, a corporation, one of the defendants herein, and Tacoma Millwork Supply Company, said company consisting of Ann Davis and others, it was agreed in Article XIV of said contract, set forth as Exhibit "A" to the cross-complaint, as follows:

“And the contractor further agrees for himself, his heirs, executors, administrators and assigns, to waive any and all right to any mechanics’ claim or lien against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract.”

WHEREFORE, having made full reply to the cross-complaint, this complainant reiterates its prayer for relief as contained in the original bill of complaint.

ELMER M. HAYDEN,
MAURICE A. LANGHORNE and
F. D. METZGER,

Attorneys for Complainant.

Office and P. O. Address: Suite 523 Tacoma Bldg.,
Tacoma, Wash.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Mar. 4, 1921. F. M. Harshberger, Clerk, By Ed M. Lakin, Deputy. [144]

Answer and Amended or Supplemental Cross-complaint of Defendants Ann Davis and R. T. Davis, Jr., et al., Copartners Doing Business as Tacoma Millwork & Supply Company.

To the Honorable E. E. CUSHMAN, Judge of the District Court of the United States, for the Western District of Washington:

Ann Davis and R. T. Davis, Jr., as executors of the Estate of R. T. Davis, Deceased, R. T. Davis,

Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company answer the bill of complaint on file in this case and bring this their answer and amended or supplemental cross-complaint against the Scandinavian-American Building Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said State; Scandinavian-American Bank, [145] a corporation organized under and by virtue of the laws of the State of Washington and a citizen of the said State; G. Wallace Simpson, a citizen of the State of Missouri; Metropolitan Life Insurance Company, a corporation duly organized under and by virtue of the laws of the State of New York and a citizen of said State; Penn Mutual Life Insurance Company, a corporation organized under and by virtue of the laws of the State of Pennsylvania and a citizen of said State; P. Claude Hay, State Bank Commissioner for the State of Washington and a citizen of the State of Washington, Forbes P. Haskell, Deputy State Bank Commissioner for the State of Washington, and a citizen of the State of Washington; McClintic-Marshall Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania and a citizen of said State.

Thereupon these answering defendants and cross-complainants do hereby answer the amended

or supplemental bill of complaint of said plaintiff McClintic-Marshall Company and bring their bill by way of cross-complaint against the parties above-named as follows:

I.

For answer to Paragraphs I, II, III, IV, V, VI, VII, VIII, and IX, X, XI, XII, XIII, XIV, and XX of said complaint these answering defendants admit same.

II.

For answer to Paragraphs XV and XVI of said complaint these answering defendants have not information or belief as to the matters and things therein contained and therefore deny the same excepting that the grounds and premises therein referred to are necessary for the construction and convenient use of said building.

III.

For answer to Paragraph XVII of said complaint these answering defendants have not information or belief as to the matters and things therein contained and therefore deny the same. [146]

IV.

For answer to Paragraph XVIII of said complaint these answering defendants admit the same excepting that portion thereof relating to the claims of these answering defendants and cross-complainants.

V.

For answer to Paragraph XIX of said complaint these answering defendants admit the reasonableness of the attorneys' fee expressed in said para-

graph in the event that a lien in the amount prayed for by plaintiff is allowed.

These answering defendants and cross-complainants specifically deny each and every allegation of said bill of complaint not herein now specifically admitted.

By way of cross-complaint allege as follows:

I.

That R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis are copartners doing business under the name and style of Tacoma Millwork Supply Company, and that with the exception of Hattie Davis Tennant, who is a citizen of the State of California, these cross-complainants are each and all of them citizens of the State of Washington.

II.

That the Scandinavian-American Building Company is a corporation organized and existing under the laws of the State of Washington, and is a citizen of said State.

III.

That the Scandinavian-American Bank is a corporation organized and existing under the laws of the State of Washington, and is a citizen of said State. [147]

IV.

On information and belief the defendant G. Wallace Simpson is a citizen of the State of Missouri.

V.

That the defendant, P. Claude Hay, is the duly

appointed, qualified and acting State Bank Commissioner for the State of Washington, and the defendant Forbes P. Haskell is the duly appointed, qualified and acting Deputy State Bank Commissioner for the State of Washington, and the said P. Claude Hay and the said Forbes P. Haskell are citizens of the State of Washington.

VI.

That Penn Mutual Life Insurance Company is a corporation organized and existing under the laws of the State of Pennsylvania, and is a citizen of said State.

VII.

That Metropolitan Life Insurance Company is a corporation organized and existing under the laws of the State of New York, and is a citizen of said State.

VIII.

That McClintic-Marshall Company is a corporation organized and existing under the laws of the State of Pennsylvania and is a citizen of said State.

IX.

That said G. Wallace Simpson was acting in the interest of and as a conduit for the Metropolitan Life Insurance Company in the execution and filing of that certain mortgage hereinafter referred to as having been executed by the Scandinavian-American Building Company, a corporation, to said G. Wallace Simpson.

X.

Further your cross-complainants show that the

matter and amount recited in their cross-complaint, exceed, exclusive of costs, [148] the sum or value of \$3,000.

XI.

That at all the times hereinafter and in this cross-complaint mentioned the defendant Scandinavian-American Building Company, a corporation, was and now is the owner of Lots Ten (10), Eleven (11) and Twelve (12), in Block One Thousand and Three (1003), as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3, 1875.

XII.

That on or about the 28th day of February, 1920, your cross-complainants entered into written contracts under the circumstances hereinafter stated with defendant Scandinavian-American Building Company, true copies of which are attached to original answer and cross-complaint of these answering defendants on file herein, and marked Exhibits "A," "B" and "C," Exhibit "A" comprising contract for the delivery of general millwork for the building to be erected upon the property hereinbefore described, Exhibit "B" comprising a contract for the millwork with respect to bank fixtures, and Exhibit "C" having reference to the erection of the millwork hereinbefore referred to as distinguished from its manufacture.

XIII.

That thereafter and in accordance with the terms

of said main or manufacturing contract, namely, Exhibit "A," and said bank fixtures contract, namely, Exhibit "B," your cross-complainants between the 28th day of February, 1920, and January 17, 1921, manufactured and delivered to said Scandinavian-American Building Company a total of manufactured material specially designed for the building to be erected and being erected upon the premises hereinbefore described, and not otherwise usable, a total in value of \$60,512.92, being the reasonable and agreed value of said goods. [149]

That your cross-complainants are and were at all times ready to fully complete said contract and that a reasonable profit on the remaining portion of contracts A and B is and would be \$1,000.00, and that your cross-complainants having no security other than as provided by the lien statutes of the State of Washington, did on the 19th day of January, 1921, duly file their claim upon said premises hereinbefore described, having first duly verified said lien and properly ensealed it and said lien was so drawn as to be entitled to be placed of record and that said lien was duly recorded as Auditor's file No. 585424 in the office of the Auditor for Pierce County, it being numbered in such manner in accordance with the system in vogue in said office for the numbering of liens, now amended by lien duly filed April 7, 1921.

XIV.

Further your cross-complainants show that all of said material so manufactured, sold and delivered to said Scandinavian-American Building Com-

pany is necessary and usable solely and alone and is to be used in the completion of that certain sixteen story building situate upon the lands and premises hereinbefore described, all of said lands and premises being necessary for the construction and convenient use of said building.

XV.

Your cross-complainants further show that on, to wit, January 17, 1921, there being then due from said Scandinavian-American Building Company to your cross-complainants the sum of \$69,507.83, with interest from said date at the rate of six per cent per annum, and the said Scandinavian-American Building Company having definitely declined and having theretofore failed and refused to pay for the amounts due upon said contract and admitting its inability to pay, and these your cross-complainants being without [150] any security for the payment of said money excepting as provided by the lien statutes of the State of Washington, duly filed and recorded with the County Auditor for Pierce County, Washington, being the county in which said property is situate, their claim of lien duly verified by oath and properly ensealed, claiming therein the full value of the said manufactured material, which lien is of record as Auditor's file Number 585115 in accordance with the system of numbering liens in vogue in the office of the Auditor of Pierce County, Washington, the said lien being in such form and so drawn as to entitle it to be placed of record in accordance with the statutes in such cases made and provided, filed as amended April 7, 1921.

XVI.

That the contract Exhibit "C," being a contract for the erection of the two several characters of millwork hereinbefore referred to as being manufactured under Exhibits "A" and "B" attached hereto and made part hereof, was entered into contemporaneously with the said other or remaining contracts by these your cross-complainants, and formed and is a part of the consideration entering into the two remaining contracts and was all one and the same transaction, each contract being a consideration for the entry into the other, and that a reasonable profit still to be derived out of said contract known as Exhibit "C" hereto attached, being the erection contract, would be and is the sum of \$6,000.00, and that the said cross-complainants have no security for payment of said amount just mentioned except as given them by the lien statutes of the State of Washington in such cases made and provided, and that they did execute and caused to be filed of record in the office of the County Auditor of Pierce County their lien in the amount of \$10,500.00, describing the property hereinbefore referred to and asking a lien thereon for the amount mentioned, now amended by lien duly filed April 7, 1921, segregating work already done. [151] Having duly verified said lien and it being properly ensealed in accordance with the Statutes of the State of Washington and being in such form and so drawn as to entitle it to be placed of record, being recorded as Auditor's file Number 585425 in accordance with the system of numbering liens in

vogue in the office of the Auditor of Pierce County, Washington.

That in addition to the foregoing your cross-complainants, under the terms and conditions of the contracts herein set forth and pursuant to the usual method of handling said work, did a great deal of work upon said manufactured products by way of assembling the various parts, which work is of the reasonable value of \$6043.00, and that in order to better secure the same a lien was duly filed in accordance with statutes in such cases made and provided in Pierce County, Washington, under Auditor's file Number 593021' on the 7th day of April, 1921, and that said lien comprises a total by way of amendment inclusive of the charge herein just recited of all the labor, material and profit claimed by these cross-complainants under their various contracts and the additional work given them by said Building Company.

XVII.

Further, that the said Scandinavian-American Building Company is wholly insolvent and was insolvent at date of signing said contracts was said bank; and both admit that payment can only be made through foreclosure of liens on the property involved.

XVIII.

Your cross-complainants further show and represent to this Court that they have been compelled to employ attorneys for the purpose of protecting and preserving their interest and enforcing their said liens and that under and by virtue of section 1141

of Remington & Ballinger's Codes and Statutes of the State of Washington they are entitled to an allowance of a reasonable attorneys' fee which they allege and aver to be the sum of \$6000. [152]

XIX.

Your cross-complainants respectfully show to this Court that Scandinavian-American Bank, a corporation, one of the defendants herein; Scandinavian-American Building Company, a corporation, one of defendants herein; G. Wallace Simpson, one of defendants herein; Penn Mutual Life Insurance Company, a corporation, an additional defendant herein; Metropolitan Life Insurance Company, a corporation, one of the additional defendants herein; P. Claude Hay and Forbes P. Haskell, State Bank Commissioner and Deputy Bank Commissioner respectively, defendants herein, claim some right, title, estate or interest in said premises but whatever the nature of said right, title, estate or interest or claim may be, if any, the same is junior, subsequent and inferior to the lien of said cross-complainants, with the exception of the lien of the Penn Mutual Life Insurance Company which your cross-complainants herein admit is a superior, prior and first lien upon said premises, being in the nature of a first mortgage.

XX.

That at about the time that these cross-complainants were submitting bids upon the work to be done as herein referred to upon the Scandinavian-American Bank Building at Tacoma, Washington, the board of trustees of said defendant Building Com-

pany were and remained during all times in issue, identical with the Board of Trustees of the Scandinavian-American Bank, one of the defendants herein, a banking corporation organized under the laws of the State of Washington, and that the following named persons, additional defendants herein, constituted the Board of Trustees of the two institutions named:

Gust Lindberg.	Dean Johnson.
Chas. Drury.	J. V. Sheldon.
G. G. Williamson.	Frank M. Lanborn.
Ole S. Larson. [153]	

XXI.

That at said time the said Building Company had entered upon negotiations through its Trustees with one G. W. Simpson, another defendant herein, who was or held himself out to be an agent for the Metropolitan Life Insurance Company for the making of loans, and had also entered into negotiations at the instance of said Simpson with one Webber, an architect, who jointly with said Simpson was to furnish certain mortgage moneys hereinafter referred to, and that said Simpson is a citizen of the State of Missouri at said time, as these cross-complainants are informed, believe and state the fact to be, and the said Webber is a citizen of the State of Pennsylvania, said Webber being an additional defendant herein.

XXII.

That at the time that these cross-complainants were submitting their bids upon the work comprised in Exhibits "A," "B," and "C," attached to this

cross-complaint and made a part hereof, the said parties mentioned in this paragraph unlawfully conspired together to advance to said Scandinavian-American Building Company moneys of the said Bank for the purpose of building the structure in issue, necessary to erect said building other than the mortgage moneys hereinafter referred to and conspired to keep such facts secret from the public, from the State Banking Department and from the contractors and parties interested in the erection of said building.

XXIII.

That they further conspired to acquire the stock of said Scandinavian-American Building Company and did so, keeping the same secret from the public, the State Banking Department and these your cross-complainants and others similarly situated, with the view to manipulating said stock as an asset to falsely cover up the insolvency which then existed of said institution. [154]

XXIV.

That they further conspired with each other to and did represent to these your cross-complainants and others similarly situated that the said Simpson and said Webber had already obtained a complete commitment from the Metropolitan Life Insurance Company for the making of a loan of \$600,000 to be evidenced by a mortgage lien upon said building inferior only to that of the Penn Mutual Life Insurance Company, and together agreed and conspired to make a further representation to said cross-complainants and others similarly situated,

that they had already at hand all of the moneys necessary to make the initial or complement payments for the full erection of said building with the exception of said \$600,000 herein just referred to, and that well knowing that they had neither said moneys just referred to nor the commitment mentioned, and well knowing that said building would cost in excess of \$1,000,000 and after finding out sometime in August of 1920 that said \$600,000 mortgage could not be procured, they still conspired to keep such fact secret from said your cross-complainants and others similarly situated and on or about October 1920, without consideration, caused the transfer of said mortgage from said Simpson to said Bank, all of which matters and things said Webber and said Simpson were fully aware, gave consent thereto and aided therein, and still continuing the fraud perpetrated on your cross-complainants the said defendants agreed to keep secret the assignment of said mortgage and ultimately to pretend and claim that said mortgage was and would be security for any advances theretofore or subsequently made by said bank to said Building Company, kept said assignment from record during all times that said bank was a going institution.

XXV.

That on or about the 18th day of February, 1920, while the final negotiations for a contract was on between said Building [155] Company and said your cross-complainants, the said parties mentioned in the foregoing paragraph among them particularly said Larson, said Drury, said Simpson and said

Webber, with the knowledge of the remaining parties mentioned in said paragraph acting in their official capacities and for themselves, represented to your cross-complainants that the initial moneys as stated in the foregoing paragraph were at hand, that the commitment for the \$600,000 was definitely secured, and on objection by these cross-complainants to the form of contract submitted particularly regarding waiver of lien and other provisions such as arbitration, further stated that all of the contracts had been drawn by the eastern syndicate represented by said Simpson and said Webber in uniform style as to waiver of liens and other specific provisions, and that all of the contracts must be signed in an exactly similar form and that all would be signed without change whatsoever; that each and all of said representations were false, were known to be false by the parties making the same, were made with intent to induce these your cross-complainants to sign said contracts, and that said your cross-complainants wholly relying upon said representations and without knowledge of the falsity thereof and without any knowledge as to the conspiracy herein referred to and as to the use of the moneys of the Scandinavian-American Bank in the premises agreed to and did sign said contracts as they appear attached to the cross-complaint herein referred to.

XXVI.

That all of the parties interested in said building similarly situated with your cross-complainants signed the respective contracts without consulta-

tion with others similarly situated or knowledge or any special arrangements entered into with such others.

XXVII.

That both said institutions known as the bank and the [156] building company were wholly insolvent at the time of these transactions, all of which was well-known to the said board of directors, and said officers including said Simpson and Webber well knew that certain of said proposing bidders or contractors who are now lien claimants would not yield to the conditions contained in said contracts without change and well knowing that there was no money at hand, that no commitment had yet been made on the \$600,000 mortgage, that the moneys at the bank in this instance was against public policy and in the face of the specific statute of the State of Washington, and after full knowledge that said mortgage of \$600,000 could not be obtained, and after certain of said contractors had entered into agreements differing in form and substance from the agreements signed by these your answering cross-complainants, still failed and neglected to advise your answering cross-complainants of this situation fraudulently keeping all these matters secret so as to induce these your answering cross-complainants to continue against their interests to manufacture and deliver material to said job.

That said trustees and said defendant Building Company, said Simpson and said Webber particularly kept from these your answering cross-complainants and others similarly situated, the fact

of the assignment of said \$600,000 mortgage to said bank, which at all times said defendants had represented to these your answering cross-complainants and others similarly situated was to produce moneys to be paid out only for the final \$600,000 of work and material delivered into said building. [157]

XXVIII.

That said cross-complainants would not have signed said contracts in said form or at all except because of their reliance on the statements made, and because of the belief that they were true, and would have refused particularly to waive their lien upon said property or to acquiesce in arbitration if any of said statements so recited had been known to be false, and would have instantly ceased manufacture and delivery under said contracts herein referred to if any of the facts herein recited as occurring subsequent to the signing of said contracts had come to their notice.

XXIX.

That the plaintiff McClintic-Marshall Company claim, as do certain other parties to this action that their liens are superior to those of these cross-complainants, but plaintiff is informed and believes the fact to be, and therefore states the same as a fact under said information and belief, that there is reasonable chargeable against said plaintiff demurrage in the amount of \$60,000 for failure to deliver steel within contract time and for other delays, and further asserts that the lien of said Webber, the architect herein referred to, because of his participation in the fraud herein recited should be denied

as a lien in the premises and that for the reasons herein set out, the liens of these cross-complainants are superior and paramount to the liens of all excepting lien claimants similarly situated and are superior and paramount to the claims of all the remaining parties to this action.

XXX.

That since the filing of the original cross-complaint in this action the receiver for said bank caused to be paid with the funds of said bank the mortgage heretofore referred to as that of the Penn Mutual Life Insurance Company, and that said mortgage has been since said time assigned to said receiver. [158]

XXXI.

That the Exhibits "A-1," "B-1," "C-1," "E-1," "F-1," and "G-1" represent the materials manufactured and delivered upon said job or place in storage or still at the factory of these your cross-complainants, all of which is specially constructed work or so cut up that it cannot be used except upon the job here in issue and specially designed for said job and all of which was done in accordance with the several contracts A, B and C herein referred to and that the reasonable value of the total claim of these your cross-complainants against said company and said building is \$69,507.83 as evidenced by the said several exhibits beginning with "A-1" and concluding with "G-1" and that the said several exhibits relate themselves to the work here involved and as related to the several

contracts (true copies of which are now on file in said cause), as follows:

Exhibit "A-1" is material manufactured under the main contract ready for delivery or actually delivered totalling \$58,555.92.

Exhibit "B-1" is fir door-bucks cut and ready for delivery in the amount of \$1,266.00, which amount comes under a fixed contract and comprises the reasonable value of said work and material, and relates to Exhibit "C" attached to the original cross-complaint. Exhibit "C-1" is the reasonable value of frames, stops, casing, etc., comprising the banking-rooms of said building and falls under Exhibit "B," known as the banking-room contract attached to the original cross-complaint now on file in this court, and said work and material is of the reasonable value of \$1957.00.

Exhibit "D-1" relates itself to Exhibit "C" attached to the original cross-complaint on file in said cause and comprises the work or erection contract in the amount of \$6,043.00 specified on said Exhibit "D-1" in the reasonable value of labor done in the progress of said work by way of making same ready for installation in said building. [159]

Exhibit "E-1" and "F-1" comprise certain amounts in the total of \$200.00 and \$8.00, respectively, on open contract representing the reasonable value of said work and materials set out in said two exhibits ordered at the special instance and request of said trustees of said Building Company.

Exhibit "G-1" represents the charge for contractor's surety bond in the total amount of \$718.41,

which is a reasonable charge for such bond and was duly agreed to be paid by said defendant trustees in behalf of said building company, in writing.

That the Summary Sheet attached hereto represents the total and reasonable claims of these your cross-complainants in the sum of \$69,507.83, none of which has been paid and which became due January 17, 1921.

XXXII.

That at the time of the failure of said bank and said Building Company and up to January 17, 1921, said defendant Drury was in active charge of the building operations here in issue and had been so actively in charge of the handling of said work upon said building, the ordering of extras and the making of payments upon said work and was in fact and in truth in full charge thereof, and that these your cross-complainants several times approached said Drury at the time above mentioned and also said defendant J. V. Sheldon, who from time to time acted in taking care of the work upon said building in said Drury's absence, with request for payment or compromise or adjustment of the claims herein represented, but that both of said defendants, acting in their official capacities and for themselves, stated to your cross-complainants that there was nothing to be done but to file the liens and that the company was without funds or assets and that a receiver has now been duly appointed for said building company as well as said bank because of the insolvency [160] of said concerns.

Further that for a period of a number of weeks prior to the stoppage of said work and on or about January 17, 1921, said building company and said remaining defendants, styled trustees herein, were repeatedly approached for payment, settlement or compromise of these matters and that none of them at any time suggested arbitration or evinced any ability to pay said claim, but in truth and in fact said building company was but a paper corporation and an integral part, although said fact was not then known to your cross-complainants of said banking institution.

WHEREFORE, your cross-complainants pray judgment in the sum of \$69,507.83 and \$6,000 as and for attorneys' fees, together with interest thereon at six per cent per annum from January 21, 1921, against said building company and against said individual defendants styled the trustees herein, namely Gust Lindberg, Chas Drury, G. G. Williamson, Dean Johnson, J. V. Sheldon, Frank M. Lanborn and Ole S. Larson and against said G. Wallace Simpson and said M. Webber, and for a decree primarily foreclosing said judgment against said property herein described and for a judgment by way of deficiency over against said individual defendants styled the trustees herein and just above mentioned and said individual defendants G. Wallace and M. Webber.

Further that said decree recites that the same and the whole of said judgment amount as prayed for be adjudged a first and valid lien against the lands and premises hereinbefore described. Further your

cross-complainants pray that said lands and premises and the building thereon situated be adjudged and decreed to be sold in satisfaction of the amount so found due to your cross-complainants according to law and the practice of this court, and that the proceeds of such sale be applied in payment of the costs of these [161] proceedings and sale and your said cross-complainants' claim amounting to \$69,507.83 and \$6,000 as and for attorneys' fees, together with interest thereon at six per cent per annum from January 21, 1921, as hereinbefore specified.

Further your cross-complainants pray that said plaintiff and the remaining defendants and all persons claiming under them or either of them subsequent to the filing and recording of your cross-complainants' liens in the office of the Auditor of Pierce County, Washington, either as purchasers or encumbrancers, lienors or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in the said premises and every part thereof. That your cross-complainants or any other parties to this suit may become a purchaser at said sale, and that the officer executing the sale shall execute and deliver the necessary conveyances to the purchaser or purchasers, and that said purchaser or purchasers at said sale may be let into the possession of said premises.

That your cross-complainants may have such other and further relief in the premises as may be just and equitable and as your Honor may deem just.

May it please your Honor to grant to your cross-complainants writs of subpoena, to be directed to the plaintiff and to the remaining defendants,

therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named to be and appear before your Honor in this Honorable Court, then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide and perform such other and further orders or decrees as to your Honor shall deem meet.

FLICK & PAUL,

Attorneys for Anna Davis and R. T. Davis, Jr., as
Executors of the Estate of R. T. Davis, Deceased, R. T. Davis et al., Copartners Doing
Business Under the Name and Style of Tacoma Millwork Supply Co. [162]

United States of America,
Western District of Washington,
Southern Division,—ss.

R. T. Davis, Jr., being duly sworn, deposes and says: That he is one of the copartners of the Tacoma Millwork Supply Company and acting agent of the remaining copartners; that he has read the foregoing answer and amended cross-complaint, knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

R. T. DAVIS, Jr.

Subscribed and sworn to before me this 7th day of April, 1921.

[Seal]

FRANK C. NEAL,

Notary Public in and for the State of Washington,
Residing at Tacoma. [163]

Exhibit "A-1."

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILDING CO., CITY.

All material MAHOGANY except where specified differently.

Key:

C. W.—Complete in Warehouse.

C. F.—Complete in Factory.

C. W.	18000	lft. mahogany base	$\frac{5}{8} \times 7\frac{3}{4}$	@ .50.....	9000.
No.	18000	" " base mold	$\frac{3}{4} \times 2$		
Claim	18000	" " base shoe	$\frac{3}{8} \times 1\frac{5}{8}$		
C. W.	1000	pcs. 7-8 door casing	$13/16 \times 4\frac{1}{2}$		
C. W.	800	" 9-0 " " " " "			
C. W.	900	" 4-0 " " " " "			
		19600 Lin. ft. @ .40.....			7840.
C. F.	900	pcs. 7-3 door stops	$\frac{3}{4} \times 2$		
C. F.	650	" 3-4 " " " " "			
C. F.	400	" 1-5 " " " " "			
		10600 Lin. ft. @ .20.....			2120.
C. F.	400	pcs. 8-10 Door Jambs	$1\frac{7}{16} \times 5\frac{5}{8}$ net		
C. F.	500	" 7-4 " " " " "			
C. F.	450	" 3-4 " " " " "			
		9400 Lin. ft. @ .50.....			4700.
C. F.	200	pcs. 3-4 mahogany trans. bar	$1\frac{13}{16} \times \frac{5}{8}$		
		@ 2.25 ea.....			450.
C. F.	322	pcs. 10-5 window head casing	$13/16 \times 4\frac{1}{2}$		
C. F.	45	" 9-10 " " " " "			
C. F.	28	" 9-0 " " " " "			
C. F.	39	" 5-0 " " " " "			
		4828 Lin. ft. @ .40.....			1931.20
C. F.	38	pcs. 9-10 Window side casing	$13/16 \times 4\frac{1}{2}$		
C. F.	830	" 7-4 " " " " "			
		7020 Lin. ft. @ .40.....			2808.
No.					
Claim	19	pcs. 9-4 mullion panelled casing	made up in shop		
"	451	" 7-0 " " " " " "			
No.	322	pcs. 10-6 window stools	$1\frac{1}{8}$		
Claim	45	" 9-11 " " " "			
No.	28	" 9-0 " " " "			
Claim	39	" 5-2 " " " "			

C. W.	322	"	10-6	window apron	$\frac{3}{4}$ x $3\frac{1}{2}$		
C. W.	45	"	9-11	"	"	"	"
C. W.	28	"	9-0	"	"	"	"
C. W.	39	"	5-2	"	"	"	"
				4828 Lin. ft. @ .25.....			1207.
C. F.	352	pcs.	11-0	cove mold	$\frac{1}{2}$ x $\frac{5}{8}$		
C. F.	45	"	10-0	"	"	"	"
C. F.	28	"	9-0	"	"	"	"
C. F.	39	"	5-2	"	"	"	"
				5160 Lin. ft. @ .05.....			258.
C. F.	38	pcs.	9-4	back casing	$\frac{3}{4}$ x $2\frac{3}{8}$		
C. F.	830	"	6-10	"	"	"	"
				6190 Lin. ft. @ .18.....			1114.20
No.							
Claim	38	pcs.	9-4	sub-jambs	$\frac{3}{4}$ x		
"	830	"	6-10	"	"	"	
[164]							
No.	322	pcs.	9-8	head sub-jambs			
Claim	45	"	9-2	"	"	"	
No.	28	"	8-0	"	"	"	
Claim	39	"	4-4	"	"	"	
C. F.	76	pcs.	9-2	window stops—hollow back	$\frac{5}{8}$ x 2		
C. F.	780	"	6-10	"	"	"	"
C. F.	138	"	2-4	"	"	"	"
C. F.	39	"	4-0	"	"	"	"
C. F.	700	"	4-6	"	"	"	"
C. F.	44	"	3-8	"	"	"	"
				10466 Lin. ft. @ .18.....			1883.88
C. F.	8	"	10-5	window head casing	$\frac{3}{4}$ x $4\frac{1}{2}$ fir		
C. F.	3	"	9-10	"	"	"	"
C. F.	20	"	7-4	window side casing	$\frac{3}{4}$ x $4\frac{1}{2}$ fir		
C. F.	4	"	10-0	"	"	"	"
No.	11	"	7-0	window mullion casing	$\frac{3}{4}$ x 4 made		
				up fir			
Claim	3	"	9-11	window stool	$1\frac{1}{8}$ fir		
No.	6	"	10-6	"	"	"	"
Claim	2	"	5-6	"	"	"	"
C. W.	3	pcs.	10-0	window apron	$\frac{3}{4}$ x $3\frac{1}{2}$ fir		
C. W.	6	"	10-6	window apron	$\frac{3}{4}$ x $3\frac{1}{2}$ "		
C. W.	2	"	5-6	"	"	"	"
				114 Lin. ft. @ .08.....			9.12
C. W.	20	pcs.	6-10	Black casing	fir		
				140 Lin. ft. @ .08.....			11.20
No.	20	pcs.	6-10	sub-jambs	fir		

Claim	11	"	9-8 head sub-jamb	fir		
C. F.	22	"	6-10 window stops	$\frac{5}{8}$ x 2	fir	
C. F.	11	"	4-6	"	"	"
			209 Lin. ft. @	.08	16.72

WOOD FRAMES FOR BANK BUILDING. FIR

In building	16	Mullion frames	9-4 $\frac{3}{4}$ x 9-3 $\frac{1}{4}$	OSM of frame		
691 Openings	3	"	8-10 x 9-3 $\frac{1}{4}$	"	"	
In Warehouses	36	"	8-10 x 7-0 $\frac{1}{4}$	"	"	
238 Openings	22	"	7-9 $\frac{1}{2}$ x 7-0 $\frac{1}{4}$	"	"	
929	"	227	"	"	"	"
"	"	2	"	"	9-4 $\frac{3}{4}$ x 7-0 $\frac{1}{4}$	with door opening
"	"	60	Triple frames	9-4 $\frac{3}{4}$ x 7-0 $\frac{1}{4}$	OSM of frame	
"	"	9	"	"	8-10 x 7-0 $\frac{1}{4}$	"
"	"	26	Mullion frames	9-4 $\frac{3}{4}$ x 7-0 $\frac{1}{4}$	"	"
"	"	6	Triple frames	7-9 $\frac{1}{2}$ x 7-0 $\frac{1}{4}$	"	"
"	"	39	Single frames	4-0 $\frac{1}{4}$ x 7-0 $\frac{1}{4}$	"	"
446 frames making 929 Openings @				\$10.00 ea	9290.00

WINDOWS. FIR

All complete	32	windows	4-3 x 8-10 $\frac{7}{8}$
977 pcs in	6	"	3-11 $\frac{5}{8}$ x 8-10 $\frac{7}{8}$
Warehouse	452	"	4-3 x 6-7 $\frac{7}{8}$
nearly complete	72	"	3-11 $\frac{5}{8}$ x 6-7 $\frac{7}{8}$
847 pcs. in factory	44	"	3-5 $\frac{3}{8}$ x 6-7 $\frac{7}{8}$
In factory	75	"	3-7 x 6-7 $\frac{7}{8}$

[165]

All complete	120	windows	2-1 $\frac{3}{4}$ x 6-7 $\frac{7}{8}$
977 pcs. in	18	"	2-2 $\frac{3}{8}$ x 6-7 $\frac{7}{8}$
Warehouse	12	"	1-6 $\frac{1}{8}$ x 6-7 $\frac{7}{8}$
Nearly complete	52	"	4-3 x 6-7 $\frac{7}{8}$
847 pcs. in	39	"	3-9 x 6-7 $\frac{7}{8}$

Factory—
in factory.

924 Windows or 1824 pes. of sash @	\$3.50 ea	6384.00
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DOORS. MAHOGANY

Nearly	200	doors	3-0 x 7-0 x 2 mahogany	1 light glass	
Complete	@	\$20.00		4000.00
in factory	250	"	3-0 x 7-0 x 2	"	1 panel
	@	\$20.00		5000.00
	200	mahogany transom sash	3-0 x 1-3 x 1 $\frac{1}{4}$		
	1	light @	\$2.50	500.00

\$58555.92

NOTE: Prices set opposite last three items are for cost as far as completed only.

[166]

Exhibit "B-1."

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILDING COMPANY, CITY.

C. F. 400 pcs. 8-11 Common fir door bucks, $2\frac{1}{2} \times 5\frac{5}{8}$

500 " 7-4 " " " " " "

450 " 3-10 " " " " " "

Above material as per contract..... 1266.00

[167]

Exhibit "C-1."

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILDING COMPANY, CITY.

All material to be mahogany unless otherwise specified.

BANKING ROOM FRAMES.

All complete	2 frames	$8-4\frac{1}{8} \times 19-3$	OSM trans.	$4-6\frac{3}{8}$	fir
11 in Bldg.	4 "	$9-3 \times 19-3$	" "	" "	" "
9 in factory	2 "	$7-9\frac{1}{8} \times 19-3$	" "	" "	" "
" "	4 "	$8-1 \times 19-3$	" "	" "	" "
" "	2 "	$7-5\frac{3}{4} \times 19-2$	" "	" "	" "
" "	1 "	$7-6\frac{1}{4} \times 19-3$	" "	" "	" "
" "	2 transom frames	$9-3 \times 5-0$	sash	$4-6\frac{3}{8}$	high fir
" "	2 "	$8-4\frac{1}{8} \times 5-0$	" "	" "	" "
" "	1 triple	$8-4\frac{1}{8} \times 6-3$	sash	$2-6\frac{3}{8} \times 5-9\frac{1}{8}$	fir
" "	1 "	$8-4\frac{1}{8} \times 5-6$	"	$2-6\frac{3}{8} \times 5-0\frac{1}{8}$	"

BANKING ROOM WINDOW TRIM.

C. F. 30 pcs.	16-0	inside stops	$15/16 \times 2\frac{5}{8}$	mahogany	
C. F. 36 "	5-0	" "	" "	"	
C. F. 6 "	6-6	" "	" "	"	
C. F. 6 "	5-6	" "	" "	"	
C. F. 27 "	8-6	" "	" "	"	
C. F. 19 "	9-6	" "	" "	"	
C. F. 12 "	7-9	" "	" "	"	
C. F. 8 "	8-0	" "	" "	"	
C. F. 30 pcs.	20-0	jamb casing	$1\frac{1}{16} \times 1\frac{1}{16}$	S4S mahogany	
C. F. 6 "	5-0	" "	" "	"	
C. F. 2 "	5-6	" "	" "	"	
C. F. 2 "	6-6	" "	" "	"	
C. F. 5 "	8-9	" "	" "	"	
C. F. 4 "	8-6	" "	" "	"	
C. F. 2 "	8-2	" "	" "	"	
C. F. 3 "	8-0	" "	" "	"	
C. F. 6 "	9-8	" "	" "	"	

C. F.	2	pes.	8-0	1 1/16 x 3 9/16	S4S	mahogany		
C. F.	4	"	8-3	"	"	"	"	"
C. F.	2	"	8-6	"	"	"	"	"
C. F.	3	"	7-9	"	"	"	"	"
C. F.	4	"	9-6	"	"	"	"	"
C. F.	5	pes.	8-9	1 1/16 x 2	S4S	mahogany		
C. F.	4	"	8-6	"	"	"	"	"
C. F.	2	"	8-2	"	"	"	"	"
C. F.	3	"	7-10	"	"	"	"	"
C. F.	6	"	9-8	"	"	"	"	"
C. F.	30	pes.	20-0	mahogany	bed	mold	1 11/16 x 1 3/4	
C. F.	6	"	5-0	"	"	"	"	"
C. F.	2	"	5-6	"	"	"	"	"
C. F.	2	"	6-6	"	"	"	"	"
C. F.	10	"	8-9	"	"	"	"	"
C. F.	8	"	8-6	"	"	"	"	"
C. F.	4	"	8-4	"	"	"	"	"
C. F.	6	"	8-0	"	"	"	"	"
C. F.	3	"	10-0	"	"	"	"	"

Material as above and on preceding sheet..... 1957.00

Banking rooms—

[168]

Exhibit "D-1."

Sold to:

SCANDINAVIAN AMERICAN BANK BUILDING COMPANY, CITY.

LABOR CONTRACT ON BUILDING.

Mitering, gluing up, smoothing off and making rabbet for base on 900 sides door casing @ \$2.00.....	1800.00
Mitering up, gluing and smoothing off 39 sides window casing @ \$2.00	78.00
Mitering and smoothing off 405 sides window casing @ \$2.00	810.00
Fitting 1848 pieces of sash into frames and preparing for hardware @ \$1.50.....	2772.00
Squaring ends of 180000 feet of base, and working tongue on ends @ \$.02¢ per foot.....	360.00
Work on 446 aprons, returning molding on ends and bringing to exact lengths @ \$.50 each.....	223.00
	<hr/>
	6043.00

[169]

Exhibit "E-1."

Sold to:

SCANDINAVIAN AMERICAN BUILDING COMPANY, CITY.

EXTRA: Not on contract.

80 pcs. scaffold bucks.....\$200.00
[170]

Exhibit "F-1."

Sold to:

SCANDINAVIAN AMERICAN BANK BUILDING COMPANY, CITY.

EXTRA: Not on contract.

40 pcs. wedges 4" x 6" x 18"\$8.00
[171]

Exhibit "G-1."

Sold to:

SCANDINAVIAN AMERICAN BUILDING COMPANY, CITY.

To premium on Contractor's surety Bonds to be paid for by

Owner as per agreement.....\$718.41

[172]

SUMMARY.

Exhibit "A"	58555.92
" "B"	1266.00
" "C"	1957.00
" "D"	6043.00
" "E"	200.00
" "F"	8.00
" "G"	718.41
	<hr/>
	68748.33
Credits May 14, 1920	\$ 8.00
" Aug. 16, 1920	5100.00
" Sept. 18, 1920	1132.50
	<hr/>
	6240.50
Total credits.....	6240.50
Balance due	62,507.83
Profit entitled to on balance of "Labor Contract".....	6,000.00
Profit entitled to on balance of "Main Contract".....	1,000.00
	<hr/>
	62,507.83

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 5, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [173]

Reply of McClintic-Marshall Company to Cross-complaint of Tacoma Millwork Supply Company.

Comes now McClintic-Marshall Company, a corporation, complainant, and for its reply to the cross-complaint of Tacoma Millwork Supply Company contained in its answer filed herein, says:

I.

For reply to the 12th paragraph of said cross-complaint this complainant admits that on the 28th day of February, 1920, the cross-complainant Tacoma Millwork Supply Company entered into certain written contracts with the Scandinavian-American Building Company, which contracts are attached to the original answer and cross-complaint of cross-complainant in this action, but denies all other matters and things contained in said paragraph.

II.

For reply to the 13th paragraph of said cross-complaint this complainant says it is without knowledge or information sufficient to form a belief as to the matters and things therein alleged and it therefore denies the same, except that it admits that on the 19th of January, 1921, the cross-complainant filed in the auditor's office of Pierce County, Washington, its claim of lien upon said premises, and that on April 7, 1921, it filed its amended lien. [174]

III.

For reply to the 14th paragraph of said cross-

complaint this complainant says that it is without knowledge or information sufficient to form a belief as to the matters and things therein stated and therefore denies the same.

IV.

For reply to the 15th paragraph of said cross-complaint this complainant says that it is without knowledge or information sufficient to form a belief as to whether or not on the 17th day of January, 1921, there was due to said cross-complainant from the Scandinavian-American Building Company the sum of \$69,507.83, or any other sum, and it therefore denies the allegations contained in said paragraph, and the whole thereof, except it admits that on said date the cross-complainant filed in the office of the auditor of Pierce County, Washington, its claim of lien against the lands and premises described therein and that on April 7, 1921, it filed its amended claim of lien against said lands and premises.

V.

For reply to the 16th paragraph of said cross-complaint this complainant says that it is without knowledge or information sufficient to form a belief as to the matters and things therein alleged and it therefore denies the same and the whole and every part thereof, except that it admits that on the date mentioned the cross-complainant filed a claim of lien in the office of the auditor of Pierce County, Washington, against the lands and premises therein described, and that on April 7, 1921, it filed its amended lien as alleged in said paragraph.

VI.

For reply to the 17th paragraph of said cross-complaint [175] this complainant denies that the Scandinavian-American Building Company was insolvent at the date of signing contracts mentioned in said cross-complaint but admits that the said Scandinavian-American Building Company is now insolvent.

VII.

For reply to the 24th paragraph of said cross-complaint this complainant says that it is without knowledge or information sufficient to form a belief as to the matters and things therein alleged and therefore denies the same except that this complainant admits that after the execution of the mortgage from the Scandinavian-American Building Company to the said Simpson in the sum of \$600,000.00, who, as this complainant believes and therefore alleges was acting for and on behalf of the Metropolitan Life Insurance Company, the said Scandinavian-American Building Company, without consideration, caused said Simpson to assign said mortgage to said bank, but the assignment was not recorded until on or about the — day of —, 1920.

VIII.

For reply to the 25th and 26th paragraphs of said cross-complaint, this complainant says that it has no knowledge or information sufficient to form a belief as to the matters and things therein alleged and therefore denies the same, the whole and every part thereof.

IX.

For reply to the 27th paragraph of said cross-complaint this complainant denies that at the time the contract between the Scandinavian-American Building Company and the cross-complainant were signed the Scandinavian-American Bank or the Building Company were insolvent. As to the other [176] matters alleged in said paragraph, this complainant says it is without knowledge or information sufficient to form a belief and therefore denies the same.

X.

For reply to the 28th paragraph of said cross-complaint this complainant says that it is without knowledge or information sufficient to form a belief and therefore denies the allegations contained therein.

XI.

For reply to paragraph 19, so far as the same relates to the lien or claim of this complainant, it denies the same, the whole and every part thereof, and denies that there is chargeable against it the sum of \$60,000.00 or any other sum for failure to deliver steel within the contract time or for any other reason, and alleges and avers the fact to be that it fully and completely performed its contract with the Scandinavian-American Building Company, which contract is set out as an exhibit to the bill of complaint filed herein.

XII.

For reply to the 21st paragraph of said cross-complaint this complainant says it has no knowl-

edge or information sufficient to form a belief as to the matters and things therein alleged and it therefore denies the same.

WHEREFORE, having fully replied to said cross-complaint this complainant prays for a decree in accordance with the prayer of its amended and supplemental bill.

E. M. HAYDEN,

MAURICE A. LANGHORNE,

F. D. METZGER,

Solicitors for Complainant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 25, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [177]

Answer of Scandinavian-American Building Company and F. P. Haskell, Jr., as Receiver, to Cross-complaint of Tacoma Millwork Supply Company.

The defendants, Scandinavian-American Building Company, a corporation, and F. P. Haskell, Jr., as Receiver of the Scandinavian-American Building Company, in answer to the amended or supplemental cross-bill of complaint of the defendants, Ann Davis and R. T. Davis, Jr., et al., copartners doing business as Tacoma Millwork & Supply Company.

I.

Answering paragraph 12 of said cross-complaint these defendants allege that the original cross-

complaint therein referred to has never been served upon the defendants in this action and they therefore object to any portion of such alleged original cross-complaint or to any exhibit which may be attached thereto being by reference incorporated into the said amended cross-bill of complaint.

II.

Answering paragraph XIII of said cross-complaint these defendants deny that the said cross-complainants manufactured or [178] delivered manufactured material especially designed to use in the building therein described of the total value of \$60,512.92, or of any other value whatsoever, and they deny that the said cross-complainant would have made a profit of \$1,000.00 had they completed their said contract, or that the said cross-complainant would have made any profit whatsoever and they deny that contemplated profits are lienable under the laws of the State of Washington, and they allege that they have not knowledge or information sufficient to form a belief as to whether or not the said cross-complainants filed any lien in form and substance as required by the statutes of the State of Washington, and therefore deny the same.

III.

Answering paragraph XIV of the said cross-complaint, these defendants deny that the material manufactured by the said cross-complainants is usable solely in the building therein mentioned,

but allege that the same is the usual and ordinary building material of like character.

IV.

Answering paragraph XV of the said cross-complaint, these defendants deny that the sum of \$69,507.83, or any other sum whatsoever was due to the said cross-complainants from the said Scandinavian-American Building Company on January 17, 1921, or at any other time whatsoever and deny that the said Scandinavian-American Building Company had theretofore failed and refused to pay any amount due from it whatsoever, and allege that they have not knowledge or information sufficient to form a belief as to whether the lien filed as therein mentioned was in form and in substance in compliance with the laws and statutes of the State of Washington, and therefore they deny the same.

V.

Answering paragraph XVI these defendants deny that the [179] contracts therein mentioned were entered into contemporaneously or that any contract formed a part of the consideration for any other contract, but allege that the mutual promises of the parties thereto formed the only consideration for the said contract, and deny that the said cross-complainant would have made the sum of \$6,000.00 and profits as therein set forth, or any other sum whatsoever, and deny that contemplated profits are alienable under the laws of the State of Washington, and allege that they have not knowledge or information sufficient to form a belief as to whether or not the said defendants filed a mechanic's lien

as therein stated, or whether or not the said lien, if filed complied with the laws and statutes of the State of Washington, and they therefore deny the same; and they deny that the said cross-complainants are entitled to any sum or sums whatsoever for their labor in assembling any manufactured profits, but they allege that such work and labor was done in accordance with the terms of the written contract in the said cross-complaint mentioned, and allege that they have not knowledge or information sufficient to form a belief as to whether or not the said cross-complainant filed any lien as therein mentioned, and as to whether or not the said lien, if filed, conformed with the laws and statutes of the State of Washington, and therefore they deny the same, and they particularly deny that the cross-complainants are entitled to any lien for contemplated profits under the laws and statutes of the State of Washington.

VI.

Answering paragraph XVII of said cross-complaint, these defendants deny that the said Scandinavian-American Building Company was insolvent when the said contracts were made.

VII.

Answering paragraph XVIII of the said cross-complaint, these defendants deny that the sum of \$6,000.00 is a reasonable sum to be allowed the said cross-complainants as attorney's fees [180] herein, and deny that the said cross-complainants are entitled to any lien whatsoever under the laws

of the State of Washington or entitled to any attorney's fees herein at all.

VIII.

Answering paragraph XX of the said cross-complaint these defendants deny that the Board of Directors of the Scandinavian-American Bank of Tacoma and the Scandinavian-American Building Company are now or ever were identical.

IX.

Answering paragraph XXI of the said cross-complaint these defendants deny that the said Webber therein mentioned ever agreed to furnish any money whatsoever to any of the parties hereto upon any mortgage or otherwise.

X.

Answering paragraph XXII of said cross-complaint these defendants deny that any person or persons whomsoever unlawfully conspired to advance money to the Scandinavian-American Building Company for any purpose whatsoever and deny that any agreement of that kind, if made, would be unlawful, and deny that any person or persons whatsoever conspired to keep any facts of any kind, name or nature from the State Banking department or from the said cross-complainant or any other person.

XI.

These defendants deny that any person or persons whatsoever conspired to acquire the stock of the Scandinavian-American Building Company in any unlawful manner, or that any such persons unlawfully kept any such agreement secret from the pub-

lie, the State Banking Department, the cross-complainants, or any other persons whatsoever, for any purpose whatsoever.

XII.

Answering paragraph XXIV these defendants deny that any person or persons whomsoever by any unlawful conspiracy or otherwise [181] represented to the said cross-complainants any fact or facts whatsoever which were not in fact true, and they particularly deny that the said Metropolitan Life Insurance Company had not given its assurance that it would make the loan of \$600,000 to be evidenced by a mortgage upon the said building, and that the said mortgage was transferred to the said bank without consideration.

XIII.

Answering paragraph XXIII these defendants deny that the said cross-complainants were induced to sign the said contract by misrepresentations or representations of any kind whatsoever, or otherwise, and they particularly deny that any representations made to the said cross-complainants were false, or were made pursuant to any conspiracy or otherwise.

XIV.

Answering paragraph XXVI of this cross-complaint these defendants allege that they have not knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein contained, and therefore they deny the same and they particularly deny that any special arrangements were entered into with any person or persons

whomsoever, and allege that if any such special arrangement were made with any person or persons whomsoever, such arrangement would not prejudice the rights of the said cross-complainants in any manner whatsoever.

XV.

Answering paragraph XXVII of the said cross-complaint these defendants deny that the said bank and the said building company were insolvent at the time of said transaction and they deny that any person or persons whomsoever knew that the said bank or the said building company were insolvent, and they deny that any person or persons whomsoever knew that any bidders or contractors whomsoever would not yield to the conditions imposed [182] by the said contract and they deny that the moneys at the bank in this instance or in any other instance was against public policy or the same was in the face of the specific statutes of the State of Washington, and deny that any person or persons whomsoever fraudulently kept any matters or things secret from the said cross-complainants for the purpose of inducing them to manufacture or deliver materials or otherwise, and deny that any person or persons whomsoever fraudulently obtained the assignment of the said \$600,000.00 mortgage to the said bank.

XVI.

Answering paragraph XXVIII of the said cross-complaint these defendants deny that the said cross-complainant signed the said contract in reliance upon any statement or statements whatsoever, ex-

cept those contained in the written contract, and deny that the cross-complainant would have refused to waive their lien as provided in the said contract or to acquiesce in any arbitration of their claim, or would have ceased to manufacture and deliver materials under the said contract had the cross-complainant known any fact or facts which are true.

XVII.

Answering paragraph XXXI of the said cross-complaint the defendants allege that they have not knowledge or information sufficient to form a belief as to whether or not goods of any value whatsoever have been manufactured and placed in storage or are still at the factory of the said cross-complainant, and therefore they deny the same, and they expressly deny that any of the material so manufactured and placed in storage or kept at the factory of the cross-complainant is specially constructed for the building mentioned in said cross-complaint and cannot be used except therein, but allege that the said material is usable in any similar building and they deny that the said material is of any special design and they particularly deny that the said cross-complainants have a claim for the sum of \$69,507.83, or any other [183] sum whatsoever, and they object to the incorporation into the said cross-complaint of any exhibit or exhibits which have not been served upon them as required by law.

XVIII.

Answering paragraph XXXII of the said cross-complaint the defendants allege that they have not

knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein contained, and they therefore deny the same, and they especially deny that at any time prior to January 17th, 1921, the said cross-complainant offered to submit any matters of difference between themselves and the said building company to arbitration, and that the said building company at any time prior thereto, failed, neglected or refused to pay to the said cross-complainants any sums justly due to them under the terms of the contract.

As a first defense to the cross-bill of complaint of the defendants, R. T. Davis, Jr., et al., copartners doing business as Tacoma Millwork & Supply Company, these defendants allege:

I.

That the said cross-complainants entered into written contracts with the said Scandinavian-American Building Company, wherein and whereby they expressly agreed to submit all matters of differences between themselves and the said building company to arbitration, that the said defendants and cross-complainants have no lien under the laws of the State of Washington for any work done or for any material furnished under the said contract, by reason thereof.

As a second defense to the cross-bill of complaint of the defendants, R. T. Davis, Jr., et al., copartners doing business as Tacoma Millwork & Supply Company, these defendants allege:

I.

That the said cross-complainants have, with knowl-

edge of the facts, filed their lines as set forth in their cross-bill of [184] complaint herein, and have included therein nonlienable items and have filed the same for amounts greatly in excess of the amount due to them in truth and in equity, and that by reason thereof, the said cross-complainants have thereby forfeited their right to any lien and their right to any equity at the hands of this Court.

As a third defense to said cross-bill of complaint, these defendants allege:

I.

That notwithstanding that the said cross-complainant now claims that there is due to it from the said Scandinavian-American Building Company the sum of \$16,507.83, the said cross-complainant has filed four liens encumbering the title to the said property and claiming a total amount due them of \$161,566.24.

As a fourth defense to the said cross-bill of complaint, these defendants allege:

I.

That the contract made between them, the said cross-complainants, and the said Scandinavian-American Building Company, by their terms provide that the said cross-complainant thereby waives any and all right to any materialmen's lien or lien against the said premises described in the said cross-complaint, and thereby expressly agreed not to file any claim or lien whatsoever against the said premises, and the said cross-complainants have thereby estopped themselves from filing such lien.

As a fifth defense to the said cross-bill of complaint, these defendants allege:

I.

That the written contracts entered into between the said cross-complainant and the said Scandinavian-American Building Company by their terms provide that all negotiations and agreements, oral and written, prior to the said agreement, are merged therein and that there are no understandings and agreements, verbal, written or otherwise, between the parties thereto except [185] as set forth in said written agreement, and that the said written agreement contained no representation whatsoever as to the finances of the said building company, the mortgages referred to in said cross-complaint, the commitment of the — referred to in said cross-complaint of the Metropolitan Life Insurance Company, or any of the matters or things therein set forth.

WHEREFORE defendants pray that the prayer of the cross-complainant in the cross-bill of complaint herein be in all respects denied.

F. D. OAKLEY,
KELLY & MacMAHON,
Attorneys for Defendants.

Copy received June 15, 1921.

FLICK and PAUL,
Attys. for Ann Davis, etc., et al.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 5, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [186]

**Answer and Cross-Complaint of Washington Brick,
Lime & Sewer Pipe Company to Amended and
Supplemental Bill of Complaint.**

Now comes the Washington Brick Lime & Sewer Pipe Company, a corporation organized under the laws of the State of Washington, one of the defendants in the above-entitled action, and answers the amended and supplemental bill of complaint herein as follows, to wit:

I.

This defendant denies knowledge as to the matters and things alleged in paragraphs XIV, XV, XVI and XVII of said amended and supplemental bill of complaint and therefore denies the same.

II.

This defendant denies knowledge as to the matters and things alleged in paragraph XVIII of said amended and supplemental bill of complaint except that it admits it has a right and interest in and to, and a lien upon said premises referred to in said complaint, but denies that said right, interest and lien is junior, subsequent and inferior to the lien of the complainant.

III.

This defendant denies each and every allegation, matter and thing contained in paragraph XIX of said amended and supplemental bill of complaint.

IV.

This defendant denies knowledge as to the matters and things contained in paragraph XX of said

amended and supplemental bill of complaint and therefore denies the same.

And for its cross-complaint and counterclaim against the complainant, and for cause of action against the Scandinavian-American Building Company, a corporation, and Forbes P. Haskell, its Receiver; Scandinavian-American Bank of Tacoma, a corporation; John P. Duke, as Supervisor of Banking of the State of Washington; and Forbes P. Haskell, as Assistant Supervisor of Banking of the State of Washington in charge of the liquidation of said bank, this [188] defendant alleges and shows:

I.

That the Washington Brick Lime & Sewer Pipe Company is now and at all times hereinafter mentioned, has been a corporation organized and existing under the laws of the State of Washington; that its annual license fee last due has been paid; and that it is a citizen of the State of Washington with its principal place of business in the City of Spokane, Washington.

II.

That the Scandinavian-American Bank of Tacoma and the Scandinavian-American Building Company are corporations, duly organized and existing under the laws of the State of Washington; are citizens of said State and are residents of the Southern Division of the Western District of the State of Washington; that John P. Duke is the regularly appointed, qualified and acting supervisor of banking of the State of Washington, and

successor in office of Claude P. Hay, named in the amended and supplemental bill of complaint as commissioner of banking for the State of Washington; that Forbes P. Haskell is the regularly appointed, qualified and acting assistant supervisor of banking of the State of Washington, and in charge of the liquidation of the affairs of the said Scandinavian-American Bank of Tacoma; that Forbes P. Haskell is also the regularly appointed, qualified and acting receiver of the Scandinavian-American Building Company, and that leave to make the said Forbes P. Haskell, as receiver of the Scandinavian-American Building Company, a party to this action, has been heretofore entered by this court.

III.

On information and belief, this defendant alleges that the defendants Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, constitute a copartnership, doing [189] business in Tacoma, Washington, under the name and style of Tacoma Millwork Supply Company, and all of said named defendants, with the exception of Hattie Davis Tennant, are citizens of the State of Washington, and the said Hattie Davis Tennant is a citizen of the State of California.

IV.

On information and belief, this defendant alleges that G. Wallace Simpson is a citizen of the State

of Missouri, and that the complainant, McClintic-Marshall Company, is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, and a citizen of said state.

V.

On information and belief, this defendant alleges that the defendants, Savage-Scofield Company; Puget Sound Iron & Steel Works; E. E. Davis & Company; Henry Mohr Hardware Company, Inc.; Hunt & Mottet; Edward Miller Cornice & Roofing Company; Far West Clay Company; St. Paul & Tacoma Lumber Company; United States Machine & Engineering Company; Colby Star Manufacturing Company; Tacoma Shipbuilding Company, and Ben Olson Company, are all corporations organized and existing under the laws of the State of Washington, and citizens of said State.

VI.

On information and belief this defendant alleges that the defendant, Otis Elevator Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen of said State, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of the State of Washington, relative to foreign corporations.

VII.

On information and belief, this defendant alleges that [190] the defendants, H. C. Greene, doing business as H. C. Greene Iron Works; J. D. Mullins, doing business as J. D. Mullins Bros.; S. O. Matthews and Frank L. Johns, a copartnership, doing

business under the name of City Lumber Agency; Carl Gebbers and Fred S. Haines, copartners, doing business under the firm name and style of Ajax Electric Company; S. J. Pritchard and C. H. Graves, copartners, doing business as P. & G. Lumber Company; Morris Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company; Theodore Hedlund, doing business as the Atlas Paint Company, and Robert M. Davis and Frank C. Neal, copartners, doing business under the firm name and style of Davis & Neal, are all citizens of the State of Washington, and residents of the Southern Division of the Western District of Washington.

VIII.

On information and belief this defendant alleges that the defendants, F. W. Madsen; Gustaf Jonasson; N. A. Hanson; A. J. Van Buskirk; C. W. Crouse; F. L. Swain; D. A. Trolson; Fred Gustafson; E. Scheibal; Paul Scheibal; F. J. Kazda; W. Donnellan; P. Hagstrom; Arthur Purvis; Roy Farnsworth; C. B. Dustin; L. J. Pettifer; Charles Bond; L. H. Broten; W. Canaday; L. R. Lilly; F. McNair; Dave Shields; Ed. Lindberg; Joe Tikalsky; F. Mente; C. Gustafson; George Larson; F. Marcellino; M. Swanson; William Griswold; C. E. Olson; C. I. Hill; Emil Johnson; C. Peterson; Earl Whitford; F. A. Fetterly; Thomas S. Short; Sherman Wells; Carl J. Geringer; George Geringer; F. R. Schoen; A. W. Anfang; C. H. Boedecker; William L. Owen; F. N. Bergren; F. H. Godfrey

and W. E. Morris, are each and every one of them citizens of the State of Washington, and residents of the Southern Division of the Western District of Washington. [191]

IX.

Further, defendant shows that the matter and amount in the above-entitled action exceed, exclusive of costs, the sum of \$3,000.00.

X.

That on and prior to November 1st, 1919, the Scandinavian-American Bank of Tacoma, was the owner in fee of Lots Eleven (11) and Twelve (12) in Block one thousand and three (1003) as the same are shown and designated on a certain plat entitled "Map of New Tacoma, W. R.," filed in the Auditor's office of Pierce County, Washington, February 3d, 1875, and was occupying said building and conducting therein its banking business.

That said bank, desiring to enlarge its banking facilities and to provide more extensive and elaborate quarters, employed one Frederick Webber, an architect of Philadelphia, Pa., to prepare plans and drawings of a proposed building to be erected on said real estate, and subsequently said architect prepared and delivered to said bank, plans and drawings thereof.

XI.

That after receiving said plans and drawings, and in order to avoid the appearance to the general public that said bank was using its resources in the building of said structure, it caused certain of its directors and stockholders, to wit: J. E. Chil-

berg, and Gustav Lindberg, to execute articles of incorporation of the Scandinavian-American Building Company, with a capital stock of Two Hundred Thousand Dollars (\$200,000.00), designating as trustees thereof, Chilberg, Larson, Lindeberg, Lindberg, Drury, James R. Thompson and George E. Williamson, who were also all of the directors of said bank, to serve for the first six months, and said bank subscribed for all of the capital stock of said corporation, other than a nominal amount held by said trustees, in order to qualify them as trustees. [192]

That on or about February 9th, 1920, said bank purchased from Charles Drury, one of its directors, and his wife, Lot Ten (10) in said block one thousand and three (1003), adjoining said premises and caused the deed of conveyance thereto to be made to said building company.

XII.

Thereafter, on or about March 10th, 1920, said bank, without any consideration, although its value was in excess of One Hundred Thousand Dollars (\$100,000.00), executed and filed a deed of conveyance to said building company of Lots Eleven (11) and Twelve (12) aforesaid, and thereupon, said bank, in pursuance of its said plans and in the name of said building company, but in truth and in fact, as its agents and trustees, entered upon the construction of a sixteen-story building, which contemplated a cost and expenditure of in excess of \$1,200,000.00. And thereafter, said building operations, negotiations of contracts for materials

and work thereon and all business of every kind in connection therewith was carried on and conducted by the principal officers of the bank and all payments for materials, labor and other services were made by said bank.

XIII.

On or about March 10th, 1920, said bank, in the name of said building company, caused a mortgage on said real estate to be executed and filed, to one G. Wallace Simpson, to secure the payment of \$600,000.00, but no consideration was paid or advanced thereunder.

On or about January 21st, 1921, said bank, without any consideration therefor, procured said Simpson to execute a written assignment of said mortgage to said bank and caused said assignment to be filed in the Auditor's Office of Pierce County, Washington. That shortly thereafter, said Scandinavian-American [193] Bank of Tacoma was declared insolvent and placed in charge of Forbes P. Haskell, as Deputy Bank Commissioner of the State of Washington, and afterwards, said Deputy Bank Commissioner procured an assignment to be executed to him of a mortgage to secure an indebtedness of Seventy Thousand Dollars (\$70,000.00), on said real estate, and now holds title thereto.

XIV.

That on or about February 28th, 1920, in the name of said building company, but in fact for said bank, a written agreement was entered into with this defendant, whereby said defendant agreed to manufacture, fabricate and furnish all of the terra

cotta for said building, according to the plans and specifications prepared by said architect, a copy of which contract is hereto attached, marked Exhibit "A," and made a part hereof.

XV.

That thereafter, pursuant to said contract, said defendant was furnished by said architect, drawings and explanations necessary to detail and illustrate said material to be manufactured and fabricated, and in accordance therewith, said defendant manufactured said material in accordance with said details and drawings, and according to the plans and specifications, and shipped a portion thereof to said company at Tacoma, to wit:

13035 cubic feet of terra cotta, which was worth, according to the terms of said contract, and the reasonable value of which was the sum of \$58,657.50;

That in addition thereto, this defendant manufactured, in accordance with said details and drawings, and according to the plans and specifications, and had ready for shipment to the said Building Company, 5340 cubic feet of terra cotta, which, according to the contract was worth, and the reasonable value of which was \$23,309.10; [194]

That in addition thereto, it had partially manufactured, in accordance with said details and drawings, 3805 cubic feet of terra cotta, which according to the contract was worth, and the reasonable value of which was the sum of \$17,323.38;

That the total value of said material so furnished, according to the contract, and the reasonable value

thereof, was the sum of \$99,289.98, and that no part thereof has ever been paid, altho demand has been made, except the sum of \$20,000, and that there is now due and owing to this defendant, on account thereof, the sum of \$79,289.98, together with interest thereon from the 24th day of February, 1921; that the first of said material was furnished on or about September 25th, 1920, and this defendant ceased to furnish such material on or about January 13th, 1921.

XVI.

This defendant alleges that it stood ready and willing to deliver all of the balance of the material provided by said contract in accordance with the plans and specifications therefor, but defendants, Scandinavian-American Building Company, and Forbes P. Haskell, as Receiver thereof, and said Forbes P. Haskell as Assistant Supervisor of Banking of the State of Washington, in charge of the Scandinavian-American Bank of Tacoma, has declined and refused to receive and accept any more thereof.

That if said cross-complainant had been permitted to fully complete and perform the balance of said contract, it would have made and earned a profit thereon of \$5,000.00.

XVII.

This defendant further alleges that within ninety days after it ceased to furnish the said builders' materials, hereinbefore referred to, and on the 24th day of February, 1921, it filed a notice of lien in writing, claiming a lien on the said [195]

building, hereinbefore referred to, and the lots on which it is situate, as hereinbefore described, for the amount due it for the said builders' materials, and the said notice of lien was duly filed in the office of the auditor of Pierce County, Washington, duly verified by the oath of the claimant, and copy thereof is hereto attached, marked Exhibit "B," and is made a part hereof.

XVIII.

That said notice of lien claimed a lien on said building and premises hereinbefore described, for the amount due to this defendant, under and by virtue of Sections 1129, 1130 and 1134 of Remington & Ballinger's Codes and Statutes of Washington.

XIX.

That this defendant has been compelled to employ attorneys to foreclose and enforce its lien, and protect and preserve its rights and interests arising under said contract and lien; that under and by virtue of the laws of the State of Washington, and particularly under the provisions of Section 1141 of Remington and Ballinger's Codes and Statutes of Washington it is entitled to a reasonable attorneys' fee therefor, which it alleges and avers is the sum of \$10,000.

XX.

This defendant alleges that the complainant in the above-entitled action, and each of the defendants therein, whose names are set forth in full in the caption or title to this answer, claim to have a lien or judgment on the lots and premises herein-

before described, and the building thereon, or claim to have some right, title or interest in and to said premises, or some part thereof, but defendant alleges that the said lien, judgment, right, title or claim is subject, secondary and subordinate to the lien of this defendant hereinbefore set forth.

XXI.

That not waiving its lien or claims thereunder, but [196] reserving its rights thereunder, this defendant filed its duly verified claim against said Scandinavian-American Bank of Tacoma with the said John P. Duke and Forbes P. Haskell, respectively supervisor of banking and assistant supervisor of banking in charge of the liquidation of said bank, and also with Forbes P. Haskell as receiver of the Scandinavian-American Building Company, and that each of said claims has been disallowed.

WHEREFORE, defendant prays that the complainant in the above-entitled action, and each of the said defendants therein, may be required to answer the counterclaim and cross-complaint of this defendant, and set forth the nature, character and extent of their claims, demands, liens, judgments, or interests, in and to said building and premises, or any part thereof, and that upon the hearing hereof they and each of their liens, judgments, right and title in and to the said building and premises, and each of them, or any part thereof, be adjudged and decreed to be subject, secondary and subordinate to the lien of this defendant, hereinbefore set forth.

Upon the hearing hereof, may this defendant have judgment against the Scandinavian-American Building Company, for the sum of \$84,289.98 and interest, as aforesaid, as well as an attorney's fee of \$10,000, for foreclosing and enforcing this lien, and for its necessary costs and disbursements herein, and

May it be adjudged and decreed that this defendant has a valid first lien on the said building, and the premises hereinbefore described, and may the said lien be foreclosed, and may the said building and premises be decreed to be sold for the satisfaction of the judgment so found due to this defendant, according to the practice of this court, and

May the proceeds of the sale be applied to the satisfaction of the judgment of this defendant.
[197]

Further this defendant prays that said defendants, and all persons claiming under them, or either of them, subsequent to the filing and recording of this defendant's lien, in the office of the auditor of Pierce County, Washington, either as purchasers or encumbrancers, lienors, or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in the said premises, and every part thereof, and that it may have a judgment and execution against the defendant, Scandinavian-American Building Company for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the satisfaction of its judgment. That this defendant, or any other parties to this

suit, may become a purchaser at said sale, and that the officer executing the sale, shall execute and deliver the necessary conveyances to the purchaser or purchasers, and that said purchaser or purchasers at said sale, may be let into the possession of said premises.

That this defendant may have such other and further relief in the premises, as may be just and equitable, and as to this court shall seem just.

CHARLES P. LUND,

DAVIS & NEAL,

Attorneys for Defendant, Washington Brick, Lime
& Sewer Pipe Company. [198]

Exhibit "A."

CONTRACT.

THIS AGREEMENT, made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Washington Brick, Lime & Sewer Pipe Company, a corporation organized and existing under the laws of the State of Washington, hereinafter called the "Contractor," party of the second part,

WITNESSETH:

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the erection of a sixteen-story building on the propetry situated in Pierce County, Washington, described as follows: Lots (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003), as shown

and designated upon a certain plat entitled "Map of New Tacoma, W. T.," of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, The said Washington Brick, Lime & Sewer Pipe Company is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish all the terra cotta above the dentil course over the back on two sides, being 11th and Pacific Avenue, the alley side to run to the granite base; the rear to run down to the wall of the adjoining building, according to estimate of February 19th, 1920, attached hereto; under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

NOW THIS AGREEMENT WITNESSETH,

Art. I. That in consideration of the agreements herein contained, the Owner agrees to pay the Contractor, the sum of One Hundred Nine Thousand Dollars (\$109,000.00) in installments as hereinafter stated. Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor,

it is stipulated that payments shall be made as follows :

75% monthly, to be paid in cash, of the estimated value of material delivered, and the balance of 25% to be paid within thirty (30) to sixty (60) days from the completion of this contract.

Art. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans [199] and specifications made by said Architect, which said plans, drawings and specifications are to be considered as a part and parcel of this agreement, as fully as if there were at length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

Art. III. The Contractor hereby agrees that time shall be considered the very essence of this contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the earliest possible moment.

Art. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building, without notice from anyone, and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

Art. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz:

Delivery of the aforementioned material to commence within four (4) months from the date of this contract, and to be completed within six (6) months.

Should the Contractor be delayed in delivering his material, by the owner, certificates are to be given for payment for material completed at the factory.

Art. V $\frac{1}{2}$. The Purchaser shall furnish to the Manufacturer such further drawings or explanations as either party may consider necessary to detail and illustrate the work to be made, and the Manufacturer shall conform thereto as a part of this contract so far as the same may be consistent with the original drawings and specifications hereinbefore referred to and with the technical possibilities of the material.

Art. VI. Should the Contractor be delayed in the progress of the work under this contract by

strike, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay. [200]

Art. VII. And in case of default in any part of the said work within the times and periods above specified, the Contractor hereby promises and agrees to pay the Owner, and the Owner may deduct from any amount coming to the Contractor the sum of Fifty (\$50.00) Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the Owner in the completion of the work.

Art. VIII. Any imperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials and workmanship, shall upon the direction of said Architect, be amended and made good by, and at the expense of the said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

Art. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the premises, caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives, and if not removed

promptly by the Contractor, the Owner is hereby authorized to remove the same at the expense of the said Contractor, and to deduct the cost thereof from any balance that may be due and owing him.

Art. X. And should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect or the Owner, the latter shall be at liberty after two days' written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this Contract; and if the Architect or the Owner shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to determine the employment to the Contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, the latter shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expense in-

curred by the Owner in finishing the work said excess shall be paid by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor. [201]

Art. XI. And the Owner reserves the right, that if there be any omission or neglect on the part of the said Contractor of the requirements of this agreement and the drawings, plans and specification, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate, free, and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; and any amount due the Contractor by reason of work done or materials furnished prior to the forfeiture of this contract, shall be retained by the said Owner until full completion and acceptance of the building upon which said work has been done or said materials furnished, at which time the said Owner, after deducting all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

Art. XII. And the Contractor further covenants, promises and agrees that he will make no

charge for any extra work performed or materials furnished in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

Art. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry sufficient liability and workmen's compensation insurance and to enter in and defend the Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages; or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

Art. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished

in and about the erection and completion of the building covered by this contract.

Art. XVI. And any and all work that may be cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts. [202]

Art. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

Art. XVIII. It is hereby further mutually covenanted, promised and agreed, by and between the said parties, that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans or specifications hereinbefore referred to, or any other matter in connection therewith, the same shall be referred to three arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of a majority of them in the matter, shall be final and binding upon them.

Art. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory

to the Owner, in the sum of Fifty-four Thousand (\$54,000,00) Dollars conditioned for the true and faithful performance of this contract on the part of the Contractor. The Bond, however, to be paid for by the Owner.

Art. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except as herein set forth. This agreement cannot be changed, altered or modified in any respect except by the mutual consent of the parties endorsed hereon in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby certifies that before the execution of his agreement he examined all the plans and specifications prepared in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding upon and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of
 SCANDINAVIAN-AMERICAN BUILD-
 ING COMPANY,

By CHARLES DRURY,
 Its President.

(Seal)

J. SHELDON,
 Its Secretary.

WASHINGTON BRICK, LIME & SEWER
 PIPE COMPANY,

Contractor.

By V. E. PIOLLET,
 Vice-President.

CHARLES P. LUND,
 Secretary. [203]

Exhibit "B."

WASHINGTON BRICK, LIME & SEWER
 PIPE COMPANY, a Corporation.

Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING
 COMPANY, a Corporation.

NOTICE OF CLAIM OF LIEN.

NOTICE IS HEREBY GIVEN that the Wash-
 ington Brick, Lime & Sewer Pipe Company, a cor-
 poration organized under the laws of the State of
 Washington, with its principal place of business at
 Spokane has and claims a lien upon certain real
 property described as:

Lots Ten (10), Eleven (11) and Twelve (12), in Block One Thousand Three (1003), as shown and designated on the map and plat of New Tacoma, as filed in the office of the Auditor of Pierce County, Washington, for materials furnished to Scandinavian-American Building Company, a corporation organized under the laws of the State of Washington, with its principal place of business at Tacoma, pursuant to a written *written* agreement between said Claimant and said Scandinavian-American Building Company, a corporation, as owner, dated February 28th, 1920, whereby said claimant agreed to furnish all the terra cotta for a building to be erected upon said real property herein described, according to plans and specifications prepared by the architect of said owner, and according to further drawings and explanations to be furnished by the owner, necessary to detail and illustrate the work to be made, for which the owner agreed to pay the sum of One hundred nine thousand (\$109,000.00) Dollars.

That pursuant to said contract, said Claimant commenced to deliver said materials to be used upon and in the construction of the building on said real estate, on September 25th, 1920, and ceased to deliver the same on or about January 13th, 1921.

That the owner or reputed owner of said real estate is Scandinavian-American Building Company, a corporation.

That there is now due and owing to said Washington Brick, Lime & Sewer Pipe Company, a corporation, claimant, from said Scandinavian-American

Building Company, a corporation, owner, the sum of Eighty-nine thousand (\$89,000.00) dollars, with interest, over and above all just credits and offsets, for which said sum said claimant has and claims a lien upon said real estate.

WASHINGTON BRICK, LIME & SEWER
PIPE COMPANY, a Corporation,

By A. B. FOSSEEN,

Its President.

Recorded February 24, 1921, on page 26, Book 16, Record of Liens, Pierce County, Washington. [204]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 25, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [205]

Answer of Scandinavian-American Building Company, a Corporation, and F. P. Haskell, Jr., as Receiver of the Scandinavian-American Building Company, to Cross-complaint of Washington Brick, Lime & Sewer Pipe Company.

The defendants, Scandinavian-American Building Company, a corporation, and F. P. Haskell, Jr., as Receiver of the Scandinavian-American Building Company, in answer to the cross-complaint of the Washington Brick, Lime and *Sewer Company*, a corporation,—

I.

Deny the allegations contained in paragraph ten thereof and deny that the Scandinavian-American

Bank of Tacoma at any time desired and intended or in any manner intended to construct a building of any kind, name or nature, upon any property whatsoever, and deny that the said bank at any time employed Frederick Webber to prepare the plans and drawings of any proposed building.

II.

Answering paragraph eleven, defendants deny that the said bank at any time whatsoever had any purpose to erect any building whatsoever or that said bank ever procured its board of directors, or any other persons to incorporate the said Scandinavian-American Building Company or that the said bank in any way caused or procured the execution and filing of articles of incorporation of the Scandinavian-American Building Company, by the persons therein mentioned, or any other persons.

III.

Answering paragraph eleven, on page seven of said cross-complaint, these defendants deny that the said bank at [206] any time acquired any property from the said Charles Drury, but allege that the said real property was deeded by the said Charles Drury for a valuable consideration to the said Scandinavian-American Building Company.

IV.

Answering paragraph twelve, these defendants deny that the said bank transferred any property whatsoever to the Scandinavian-American Building Company without consideration and deny that the said Scandinavian-American Building Company at

any time or for any purpose was the agent or trustee of the said Scandinavian-American Bank at Tacoma, and deny that the said Scandinavian-American Bank conducted any operations or made any contracts in the erection of the structure therein mentioned.

V.

Answering paragraph thirteen, these defendants deny that the said bank in any manner caused any mortgage upon the said property to be executed, and deny that the mortgage therein mentioned was executed without consideration, and deny that the assignment of the said mortgage was made to the said bank without consideration.

VI.

Answering paragraph XIV these defendants deny that the said bank entered into any contract whatsoever with the cross-complainant, but allege that the contract therein referred to was made by the defendant with the said Scandinavian-American Building Company. [207]

VII.

Answering paragraph XV, these defendants deny that the cross-complainant furnished any material whatsoever to the said Scandinavian-American Bank or the said Scandinavian-American Building Company, but allege that none of the material mentioned in said paragraph was ever delivered either to the said Scandinavian-American Bank of Tacoma, or to the said Scandinavian-American Building Company and deny that the said cross-complainant in fact manufactured any con-

siderable portions of the materials therein mentioned.

VIII.

Answering paragraph XVI these defendants deny that the cross-complainant was at any time ready, willing and able to furnish the material, or any part thereof as specified in said contract, or at all.

IX.

Answering paragraphs XVII and XVIII these defendants allege that they have not knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein contained, and they therefore deny the same and each and every one thereof.

X.

Answering paragraph XIX these defendants deny that the cross-complainant is entitled to \$10,000.00 as an attorney's fee herein, or any other sum whatsoever. [208]

XI.

Answering paragraph XXI of said cross-complaint these defendants allege that the cross-complainant at all times dealt with the Scandinavian-American Building Company and that the said cross-complainant is estopped by its own contract.

AS AN AFFIRMATIVE DEFENSE to the allegations contained in the cross-complaint of the said cross-complainant, these defendants allege:

I.

That the cross-complainant dealt with the said

defendant, Scandinavian-American Building Company, a corporation, as a corporate entity with reference to the matters and things set forth in the cross-bill of complaint herein and they thereby estopped themselves from denying the corporate entity of the said defendant, Scandinavian-American Building Company, and estopped themselves from denying a recital contained in the contract hereinafter mentioned, to the effect that the said Scandinavian-American Building Company was erecting the said building on the premises therein described and was the owner thereof.

AS A SECOND DÉFENSE against the cross-bill of the said cross-complainants, these defendants allege:

I.

That if the defendant, Scandinavian-American Building Company, a corporation, was, in law, the agent of the Scandinavian-American Bank of Tacoma in the erection of the said building as set forth by the cross-complainants, that nevertheless, the defendants, Washington Brick, Lime and Sewer Company have no lien against the said property and that the said cross-complainants in the furnishing of such material and supplies to be used in the [209] construction of the said building did not mail to the said Scandinavian-American Bank of Tacoma, a notice, in writing, stating substantially that it had commenced the delivery of such materials and supplies for use therein, that a lien might be claimed for the same, as it was required to do under the provisions of Section 1133 of Reming-

ton's Codes and Statutes of Washington, as a prerequisite to the filing of such lien.

AS A THIRD DEFENSE to the cross-bill of complaint of the cross-complainants, these defendants allege:

I.

That the cross-complainants by filing its claim with the liquidators of the said defendants, Scandinavian-American Bank of Tacoma, as set forth in the cross-bill of complaint herein, has estopped itself from proceeding upon the said cross-bill of complaint herein.

AS A FOURTH DEFENSE to the cross-bill of complaint of the defendants, Washington Brick, Lime & Sewer Company, these defendants allege:

I.

That the building materials mentioned in the said cross-complaint as having been shipped to Tacoma by the cross-complainant are still in the possession of the said cross-complainant in the city of Tacoma, but that said materials were not shipped in accordance with the said contract, in this, to wit, that the materials for the lower floors of the said building have not been shipped complete, and that much of said materials is worthless for the reason that the same are cracked and split, and are not of uniform color. [210]

AS A FIFTH DEFENSE to the cross-bill of complaint of the cross-complainants these defendants allege:

I.

That since the institution of the above-entitled

action the Receiver herein called upon the said cross-complainant to deliver certain of the materials described in said contract and in its cross-complaint herein, in order that the same might be placed upon the said structure to preserve the same from the elements, but that the said cross-complainant then refused and has at all times refused to make delivery of any of such materials.

WHEREFORE these defendants pray that the prayer of the cross-complainant's cross-complaint be in all respects denied.

F. D. OAKLEY,
KELLY & MacMAHON,
Attorneys for Answering Defts.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 19, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [211]

Reply to Answer and Cross-complaint of Washington Brick, Lime & Sewer Pipe Company.

Comes now complainant, McClintic-Marshall Company, a corporation, and for its reply to the cross-complaint and counterclaim of the Washington Brick Lime & Sewer Company as contained in its answer filed herein, says:

I.

For reply to the 15th paragraph of the cross-complaint and counterclaim, this complainant says that it is without any knowledge or information sufficient to form a belief as to the matters and

things therein alleged and therefore denies the same and demands strict proof concerning the allegations contained in said paragraph.

II.

For reply to the 16th paragraph of the cross-complaint and counterclaim this complainant says that it is without knowledge or information sufficient to form a belief as to the matters and things therein set forth and therefore denies the same and demands strict proof thereof.

III.

For reply to the 17th paragraph of the cross-complaint and counterclaim this complainant admits that on the 24th day of February, 1921, the cross-complainant filed a [212] notice of lien in writing in the auditor's office of Pierce County, Washington, copy of which lien is attached to the answer, marked Exhibit "B," but this complainant says that it has no knowledge or information sufficient to form a belief as to whether the amount claimed in the lien is the correct amount due to said cross-complainant from the Scandinavian-American Building Company for the materials alleged to have been furnished and demands strict proof thereof.

IV.

For reply to the 19th paragraph of said cross-complaint and counterclaim this complainant admits that if cross-complainant prevails in this proceeding and establishes its lien for the amount claimed or for any other amount, it will be entitled to a reasonable attorney's fee, but denies that the sum of \$10,000 is a reasonable attorney's fee to be allowed,

and avers that if the attorney's fees be allowed to the cross-complainant if it should prevail, ought to be fixed by the Court.

E. M. HAYDEN,
M. A. LANGHORNE,
F. D. METZGER,
Attorneys for Complainant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 27, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [213]

Order Allowing Ben Olson Company Leave to File Amended Answer and Cross-complaint.

Upon the application of Stiles & Latcham and J. F. Fitch, its attorneys—

ORDERED that defendant Ben Olson Company have leave to file an amended answer in the above-entitled action.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 24, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [214]

Amended Answer of Ben Olson Company.

Now comes the Ben Olson Company, a corporation organized under the laws of the state of Washington,

one of the defendants in the above-entitled action, and for its amended answer and counterclaim answers the amended and supplemental bill of complaint herein, under leave of the Court first had and obtained, as follows, to wit:

I.

This defendant denies knowledge as to the matters and things alleged in paragraphs XIV, XV, XVI and XVII of said amended and supplemental bill of complaint and therefore denies the same.

II.

This defendant denies knowledge as to the matters and things alleged in paragraph XVIII of said amended and supplemental bill of complaint except that it admits it has a right and interest in and to, and a lien upon said premises referred to in said complaint, but denies that said right, interest and lien is junior, subsequent and inferior to the lien of the complainant.

III.

This defendant denies each and every allegation, matter and thing contained in paragraph XIX of said amended and supplemental bill of complaint.

IV.

This defendant denies knowledge as to the matters and things contained in paragraph XX of said amended and supplemental bill of complaint and therefore denies the same. [215]

And for its cross-complaint and counterclaim against the complainant, and for cause of action against the Scandinavian-American Building Company, a corporation, and Forbes P. Haskell, its

Receiver; Scandinavian-American Bank of Tacoma, a corporation; John P. Duke, as Supervisor of Banking of the State of Washington; and Forbes P. Haskell, as Assistant Supervisor of Banking of the State of Washington in charge of the liquidation of said bank, this defendant alleges and shows:

I.

That the Ben Olson Company is now and at all the times hereinafter mentioned, has been a corporation organized and existing under the laws of the State of Washington; that its annual license fee last due has been paid; and that it is a citizen of the State of Washington with its principal place of business in the City of Tacoma, Washington.

II.

That the Scandinavian-American Bank of Tacoma and the Scandinavian-American Building Company are corporations, organized and existing under the laws of the State of Washington; are citizens of said State and are residents of the Southern Division of Western District of the State of Washington; that John P. Duke is the regularly appointed, qualified and acting Supervisor of Banking of the State of Washington, and successor in office of Claude P. Hay, named in the amended and supplemental bill of complaint as Commissioner of Banking for the State of Washington; that Forbes P. Haskell is the regularly appointed, qualified and acting assistant Supervisor of Banking of the State of Washington, and in charge of the liquidation of the affairs of the said Scandinavian-American Bank of Tacoma; that Forbes P. Haskell is also

the regularly appointed, qualified and acting receiver of the Scandinavian-American Building Company, and that leave to make the said Forbes P. Haskell, as receiver of the Scandinavian-American Building Company, a party to this action, has been heretofore entered by this Court. [216]

III.

On information and belief, this defendant alleges that the defendants Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maud A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, constitute a copartnership, doing business in Tacoma, Washington, under the name and style of Tacoma Millwork and Supply Company, and all of said named defendants, with the exception of Hattie Davis Tennant, are citizens of the State of Washington, and that the said Hattie Davis Tennant is a citizen of the State of California.

IV.

On information and belief, this defendant alleges that G. Wallace Simpson is a citizen of the State of Missouri, and that the complainant, McClintic-Marshall Company, is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, and a citizen of said State.

V.

On information and belief, this defendant alleges that the defendants, Savage-Scotfield Company; Puget Sound Iron & Steel Works; E. E. Davis &

Company; Henry Mohr Hardware Company, Inc.; Hunt & Mottet Co.; Edward Miller Cornice & Roofing Company; Far West Clay Company; St. Paul & Tacoma Lumber Company; United States Machine & Engineering Company; Washington Brick, Lime and Sewer Company, are all corporations organized and existing under the laws of the State of Washington, and citizens of said State.

VI.

On information and belief this defendant alleges that the defendant, Otis Elevator Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen of said State, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of the State of Washington, relative to foreign corporations.
[217]

VII.

On information and belief, this defendant alleges that the defendants, H. C. Greene, doing business as H. C. Greene Iron Works; J. D. Mullins, doing business as J. D. Mullins Bros.; S. O. Matthews and Frank L. Johns, a copartnership, doing business under the name of City Lumber Agency; Carl Gebbers and Fred S. Haines, copartners, doing business under the firm name and style of Ajax Electric Company; S. J. Pritchard and C. H. Graves, copartners, doing business as P. & G. Lumber Company; Morris Kleiner, doing business as Liberty Lumber & Fuel Company; J. A. Soderberg, doing business as West Coast Monumental Company;

Theodore Hedlund, doing business as the Atlas Paint Company, and Robert M. Davis and Frank C. Neal, copartners, doing business under the firm name and style of Davis & Neal, are all citizens of the State of Washington and residents of the Southern Division of the Western District of Washington.

VIII.

On information and belief this defendant alleges that the defendants, F. W. Madsen; Gustaf Jonasson; N. A. Hanson; A. J. Van Buskirk; C. W. Grouse; F. L. Swain; D. A. Trolson; Fred Gustafson; E. Scheibal; Paul Scheibal; F. J. Kazda; W. Donnellan; P. Hagstrom; Arthur Purvis; Roy Farnsworth; C. B. Dustin; L. J. Pettifer; Charles Bond; L. H. Broten; W. Canady; L. R. Lilly; F. McNair; Dave Shields; Ed Lindberg; Joe Tikalsky; F. Monte; C. Gustafson; George Larson; F. Marcellino; M. Swanson; William Griswold; C. E. Olson; C. I. Hill; Emil Johnson; C. Peterson; Earl Whitford; F. A. Fetterly; Thomas S. Short; Sherman Wells; Carl J. Gerringer; George Gerringer; F. R. Schoen; A. W. Anfang; C. H. Boedecker; William L. Owne; F. N. Bergren; F. H. Godfrey and W. E. Morris, are each and every one of them citizens of the State of Washington, and residents of the Southern Division of the Western District of Washington.

IX.

Further, defendant shows that the matter and amount in the above-entitled action exceed, exclusive of costs, the sum of \$3000.00 [218]

X.

That on and prior to November 1st, 1919, the Scandinavian-American Bank of Tacoma, was the owner in fee of Lots Eleven (11) and Twelve (12) in Block one thousand and three (1003) as the same are shown and designated on a certain plat entitled "Map of New Tacoma, W. T.," filed in the Auditor's office of Pierce County, Washington, February 3d, 1875, and was occupying said building and conducting therein its banking business.

That said bank, desiring to enlarge its banking facilities and to provide more extensive and elaborate quarters, employed one Frederick Webber, an architect of Philadelphia, Pa., to prepare plans and drawings of a proposed building to be erected on said real estate, and subsequently, said architect prepared and delivered to said Bank, plans and drawings thereof.

XI.

That after receiving said plans and drawings, and in order to avoid the appearance to the general public that said bank was using its resources in the building of said structure, it caused certain of its directors and stockholders, to wit: J. E. Chilberg, and Gustav Lindberg, to execute Articles of Incorporation of the Scandinavian-American Building Company, with a capital stock of Two Hundred Thousand Dollars (\$200,000.00), designating as trustees thereof, J. E. Chilberg, O. S. Larson, Jafet Lindberg, Gustaf Lindberg, Charles Drury, James R. Thompson and George G. Williamson, who were also all of the directors of said bank, to

serve for the first six months, and said Larson, as President of said bank subscribed for all of the capital stock of said corporation, except one share each held by said trustees, in order to qualify them as trustees.

XII.

That on or about February 9, 1920, said bank purchased from Charles Drury, one of its directors, and his wife, Lot Ten (10) in said Block one thousand and three (1003), adjoining said building.

XIII.

Thereafter, on or about March 10, 1920, said bank, without any consideration, although its value was in excess of One Hundred [219] Thousand Dollars (\$100,000.00), executed and filed a deed of conveyance to said building company of Lots Eleven (11) and Twelve (12) aforesaid; and thereupon, said bank, in pursuance of its said plans and in the name of said building company, but in truth and in fact, as its agents and trustees, entered upon the construction of a sixteen story building which contemplated a cost and expenditure of in excess of \$1,200,000.00. And thereafter, said building operations, negotiations of contracts for materials and work thereon and all business of every kind in connection therewith was carried on and conducted by the principal officers of the bank and all payments for materials, labor and other service were made by said bank.

XIV.

On or about March 10, 1920, said bank, in the name of said building company, caused a mortgage

on said real estate to be executed and filed, to one G. Wallace Simpson, to secure the payment of \$600,000.00, but no consideration was paid or advanced, or contracted to be paid or advanced thereunder.

On or about January 21st, 1921, said bank after its insolvency as hereinafter stated, without any consideration therefor, procured said Simpson to execute a written assignment of said mortgage to said bank and caused said assignment to be filed in the Auditor's office of Pierce County, Washington. That shortly thereafter, said Scandinavian-American Bank of Tacoma was declared insolvent and placed in charge of Forbes P. Haskell, as Deputy Bank Commissioner of the State of Washington, and afterwards, said Deputy Bank Commissioner without any lawful authority therefor, procured an assignment to be executed to him of a mortgage to secure an indebtedness of Seventy Thousand Dollars (\$70,000.00), on said real estate, and now claims to hold title thereto.

XV.

That thereupon, and on the 27th day of February, 1920, the said Scandinavian-American Bank of Tacoma further procured its said directors to enter into a contract with the defendant Ben Olson Company, in the name of said Scandinavian-American Building Company, as [220] the contracting party, by said Drury, its President, but in behalf of said Scandinavian-American Bank of Tacoma, for the plumbing and heating materials and labor, for said building, for the express sum of Ninety Thousand Dollars, (\$90,000.00), but for the actual sum of

Ninety-one Thousand Dollars (\$91,000.00), One Thousand Dollars of which sum was to be paid, and was paid, by sale and delivery to this defendant of the radiators upon the old building; and said contract provided that the sum of Ninety Thousand Dollars should be paid as follows, to wit:

“75% monthly, to be paid in cash of the estimated value of work delivered and also of work erected in place, and the balance to be paid within thirty (30) to sixty (60) days from the completion and acceptance of work by the Architect.”

And it was further provided by said contract as follows, viz:

“Contractor to follow erection of steel work with all main lines for plumbing and heating and to buy, if necessary, piping in the open market in order to keep up with the steel work, so that the whole of said work can be completed within ten (10) months from the date of this contract.”

A copy of said contract is annexed hereto, and made a part hereof, being marked, “Ben Olson Company Exhibit ‘A.’”

XVI.

That this defendant, Ben Olson Company, furnished its bond for \$45,000.00, and otherwise complied with all of the terms of said contract, and, commencing with July 1, 1920, it furnished and delivered to said premises materials for said plumbing and heating, as follows:

1920

July 1, materials of the value of	
(1)	\$8,378.03
August 30, materials of the value of	
(2)	7,764.83
January 4, materials of the value of	
(3)	7,814.40
January 15, materials of the value of	
(4)	675.81
	<hr/>
Total	\$24,633.07

XVII.

That this defendant, Ben Olson Company, also procured ready for delivery, and stored in its warehouse, materials for said plumbing and heating of said building not adapted to any other building, as follows: [221]

1921

Jan. 4, materials of the value of.....	\$5,875.60
and	2,250.00
	<hr/>
Total	\$8,125.60

XVIII.

That this defendant, Ben Olson Company, also procured from Crane Company, 86 Closets complete with fixtures adapted to said building, which Crane Company charges against this defendant, parts of which were delivered to said building, and the remainder of which it has ready for delivery in its warehouse in Tacoma; said closets not being adapted to any other building.

January 21, 1921, 86, remainder of closets of the value of \$6,132.66.

XIX.

That this defendant, Ben Olson Company, also procured from Crane Company, certain toilet-room and lavatory materials and fixtures adapted only to said building, which Crane Company charges against this defendant, and has ready for delivery, in its warehouses in Tacoma; said toilet-room and lavatory materials and fixtures not being adapted to any other building.

January 21, 1921, Toilet and Lavatory materials and fixtures of the value of\$12,910.76.

XX.

That all of said materials and fixtures not actually delivered on said premises were procured by this defendant in time, and would have been delivered and put in place in said building, within the time provided in said contract, but for the fact that the construction of said building was so delayed by the owners and the steel contractors thereof, that the same could neither be placed upon the premises nor erected.

XXI.

That this defendant furnished and performed labor in the construction of the plumbing and heating of said building, under said contract, which continued until January 15, 1921, of the value of\$2,279.80.

[222]

XXII.

That no part of the said contract price of Ninety-

one Thousand Dollars has been paid, except the following, viz:

July 1, 1920, by Radiators in old Building	\$	1,000.00
July 13, 1920, Account of Materials, (Cash)		6,283.52
Account of Labor (Cash)		122.25
Sept. 24, 1920, A/c of Materials (Cash)		
A/c of Labor (Cash)	156.00	6,019.79
Total Payments ..	\$	13,425.56

XXIII.

That to have completed the work of the plumbing and heating of said building under said contract, this defendant Ben Olson Company, would have had to procure and furnish additional materials of the value of\$16,691.64 and additional labor at a cost of 11,196.70 or a total additional expense of\$27,888.34

Whereby the entire cost of the labor and materials to this defendant, upon said plumbing and heating contract work, would have been\$79,690.43 and the remainder of the contract price of said work being \$91,000.00, less the entire expense for labor and materials above stated, to wit: \$8,029.77, would have been an earned profit of this defendant, under said contract.

XXIV.

That this defendant, Ben Olson Company, was, at all times ready, able and willing to proceed with said plumbing and heating work, under said con-

tract, and would have proceeded with and completed the same, and would have earned the said profit of \$8,029.77, but for the following facts to wit:

The construction of said building was proceeded with, so that on the 15th day of January, 1921, the steel framework thereof was practically completed, and this defendant had been able to install a small part of the plumbing and heating materials, and awaited progress of the other contractors to permit it to install the remainder thereof, but on the 15th day of January, the said Scandinavian-American [223] Bank of Tacoma, which had provided and paid the money necessary for cash payments for the construction of said building up to that time, became insolvent, and its affairs were taken possession of by the said Claude P. Hay, as State Bank Commissioner (whose successor in office is defendant John Duke, Supervisor of Banking), who proceeded to liquidate it, with the assistance of the said Forbes P. Haskell, as Deputy State Bank Commissioner, and, thereafter, and on said 15th day of January, 1921, and because of the insolvency of said Scandinavian-American Bank of Tacoma, and said Hay, as such State Bank Commissioner, and said Scandinavian-American Building Company; and said Scandinavian-American Bank of Tacoma, and said Scandinavian-American Building Company failed, neglected and refused to pay to this defendant the sum of \$14,288.18, being 75% of the value of the materials and labor of the value of \$19,050.90, which had been theretofore certified as delivered and performed, on the 4th

day of January, 1921, by the Architect of said building; whereupon and wherefore, this defendant was compelled to cease all work on said building, and said contract was terminated.

XXV.

That thereafter, and on the 14th day of April, 1921, and within 90 days after the furnishing of its last materials, and the performance of its last labor upon said building, this defendant duly filed and recorded with the County Auditor of said Pierce County, its claim of lien, duly verified by oath, for the said materials and labor upon said Lots 10, 11 and 12, in Block 1003 as provided by the laws of the State of Washington, in the sum of \$41,666.52; a copy of which lien claim is hereto attached, and made a part hereof, being marked "Ben Olson Company Exhibit 'B' "; and that by inadvertence and mistake, the name of said Scandinavian-American Building Company, in the caption of said lien claim, and in the fifth line of the body of said claim was wrongly written "Scandinavian Building Company," and this defendant will upon the hearing of this cause, ask leave of the Court, to amend said claim of lien so that the true name of said Scandinavian-American Building Company, may appear in all the parts thereof. [224]

XXVI.

That this defendant has commenced no action for the foreclosure of its said lien, or for the recovery of the sum due it upon said contract; though it heretofore presented to said State Bank Commis-

sioner its claim as a creditor of said Scandinavian-American Bank of Tacoma, which he disallowed.

XXVII.

That Article XIV of said contract read as follows:

“Art. XIV. And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive all right to any mechanic’s claim or lien against said premises, and hereby agrees not to file any claim or lien whatsoever against the premises involved in this contract.”

That at the time of the execution of said contract, this defendant objected to the inclusion of said article therein, and refused to execute the same with said article therein. But thereupon, to induce this defendant to execute said contract with said article included, the following representations were made to it by Ole S. Larsen, President of said Scandinavian-American Bank of Tacoma and Charles Drury, President of said Scandinavian-American Building Company, to wit:

1. That all other contracts for labor and materials for said building contained and would contain a like provision for waiving of liens.

2. That contracts had been made between said Bank and said Building Company, and certain third persons, that said third persons would furnish all the money necessary to pay the cost of said Building in the sum of One Million Two Hundred and Fifty Thousand (\$1,250,000) Dollars, and would accept mortgages on said premises to secure

the repayment of said sum; but that it was necessary, in order to secure the said money, that said premises should remain free of liens.

That this defendant believed and relied upon said representations, and thereupon so believing and relying, executed said contract, but would not have done so but for said belief and reliance. [225]

That had said representations been true said building would have been fully financed, and all labor and materials would have been paid for, and the necessity for any claims or liens would have been obviated.

That neither of said representations was true. That many of the most important contracts for labor and materials to be furnished for said building did not contain waivers of the right to file liens; and no contracts had been made, or were ever made, with third persons to furnish \$1,250,000.00 or any other sum for the financing of said building construction.

That the falsity of said representations was not known to this defendant until after the commencement of this action.

And that by reason of the foregoing facts, and of the abandonment of said contract by the said Bank and Building Company, they and the said John P. Duke, Supervisor of Banking and Forbes P. Haskell, Receiver of said Scandinavian-American Building Company, are, and each of them is, and of right ought to be estopped from asserting said Article XIV of said contract against this defendant.

WHEREFORE, the defendant, Ben Olson Company, prays the judgment of this Honorable Court, in its behalf, as follows:

1. That the defendants, Scandinavian-American Bank of Tacoma, Scandinavian-American Building Company, and John P. Duke, as State Supervisor of Banking for the State of Washington, and Forbes P. Haskell as Receiver of said Scandinavian-American Building Company, and all other defendants, may be required to answer to the matters herein alleged as this defendant's counterclaim.

2. That this defendant may have judgment herein against the said Scandinavian-American Bank of Tacoma, said Scandinavian-American Building Company, and said John P. Duke, as State Supervisor of Banking for the State of Washington, and Forbes P. Haskell, as Receiver of said Scandinavian-American Building Company, for the sum of Forty-nine Thousand Six Hundred and Eighty-six and 10/100 Dollars (\$49,686.10), less such sum as may be awarded herein to the said Crane Company, upon [226] its lien claim, if any, with interest thereon, from January 15, 1921, together with a further sum equal to seven per cent of its judgment as an attorney's fee of foreclosure, and its costs herein.

3. That the sum of \$41,666.52 (less any sum awarded herein to the said Crane Company), with the interest thereon, attorney's fees and costs, be adjudged at first and valid lien against the lands and premises hereinbefore described.

4. That the sum of \$8,029.77, included in said

judgment, with the interest thereon, be adjudged and allowed as a claim established against the property and assets of said Scandinavian-American Bank of Tacoma, in liquidation in the hands of the said John P. Duke, as State Commissioner of Banking of the State of Washington.

5. That said lands and premises and the building thereon be ordered sold, in satisfaction of the amount so found due to this defendant, for which it is entitled to a lien, according to law and the practice of this Court, and that the proceeds of such sale be applied to the payment of this defendant's lien, judgment and costs.

6. That any deficiency that may remain after said sale, and after the application of the proceeds thereof to the payment of this defendant's lien judgment for said \$41,666.52, interest, attorney's fees and costs, may be likewise adjudged and allowed as a claim established against the property and assets of the said Scandinavian-American Bank of Tacoma, in liquidation in the hands of the said John P. Duke, as supervisor of Banking of the State of Washington.

7. That this defendant, or any other party to this action may become a purchaser at the sale of said property, and that the officer executing the order of sale, execute and deliver the necessary conveyance to the purchaser or purchasers; and that the purchaser or purchasers may be let into the possession of the premises upon production of such conveyance or conveyances.

8. That this defendant may have such other and further relief in the premises as may be just and equitable.

BEN OLSON COMPANY,
Defendant.

O. B. OLSON,
President.

STILES & LATCHAM and [227]

J. F. FITCH,

Attorneys for Ben Olson Company, Defendant.
[228]

Ben Olson Company Exhibit "A."

THIS AGREEMENT, made this 27th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Ben Olson Co., of Tacoma, Washington, hereinafter called the "Contractor," party of the second part.

WITNESSETH:

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the erection of a sixteen story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003) as shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Pennsylvania, Architect, and

WHEREAS, the said Ben Olson Co., of Tacoma, Washington, is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish all plumbing and heating, as per estimate of February 21, 1920, hereto attached, under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

NOW THIS AGREEMENT WITNESSETH:

Art. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor the sum of Ninety Thousand and no/100 (\$90,000.00) Dollars in installments as hereinafter stated. Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows:

75% monthly, to be paid in cash, of the estimated value of work delivered and also of work erected in place, and the balance of 25% to be paid within thirty (30) days to sixty (60) days from the completion and acceptance of work by the Architect.

Art. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the Architect

of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans and specifications made by said Architect, which said plans, drawings and specifications are to be considered as a part and parcel of this agreement, as fully as if they were at length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

Art. III. The Contractor hereby agrees that time shall be considered the very essence of this contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the earliest possible moment.

Art. IV. The Contractor further covenants and agrees to observe carefully the progress of the work, upon the entire building, without, [229] notice from anyone, and to procure drawings at least two weeks prior to the execution of the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

Art. V. The said Contractor shall complete the

several portions and the whole of the work comprehended under this agreement by and at the time hereinafter stated, viz.:

Contractor to follow erection of steel work with all main lines for plumbing and heating and to buy, if necessary, piping in the open market in order to keep up with the steel work, so that the whole of said work can be completed within ten (10) months from the date of this contract.

It is also understood and agreed that the radiators from the old building are to belong to the contractor.

Art. VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay.

Art. VII. And in case of default in any part of the said work within the times and periods above specified, the Contractor hereby promises and agrees to pay the Owner, and the Owner may deduct from any amount coming to the Contractor the sum of Fifty (\$50.00) Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the Owner in the completion of the work.

Art. VIII. Any imperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials or workmanship, shall, upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor the cost of making good the work.

Art. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the premises, caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives, and if not removed promptly by the Contractor, the Owner is hereby authorized to remove the same at the expense of the said Contractor, and to deduct the cost thereof from any balance that may be due and owing him.

Art. X. And should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect or the Owner, the latter shall be at liberty after two days' written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract; and if the Architect or the Owner shall certify that

such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools, and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, the latter shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time if the unpaid balance of the [230] amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work said excess shall be paid by the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor.

Art. XI. And the Owner reserves the right, that if there be any omission or neglect on the part of the said Contractor of the requirements of this agreement and the drawings, plans and specifications the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate,

free, and discharge the said Owner from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; and any amount due the Contractor by reason of work done or materials furnished prior to the forfeiture of this contract, shall be retained by the said Owner until the full completion and acceptance of the building upon which said work has been done or said materials furnished, at which time the said Owner, after deducting all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

Art. XII. And the Contractor further covenants, promises and agrees that he will make no charge for any extra work performed or materials furnished in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

Art. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the Contractor agrees at his own expense to carry sufficient liability and workman's compensation insurance and to enter in and defend the Owner against, and waive it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages; or on account of

alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under, or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

Art. XIV. And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all right to any mechanic's claim for lien against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract.

Art. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and material men for work done and materials furnished in and about the erection and completion of the building covered by this contract.

Art. XVI. And any and all work that may be cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts.

Art. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or

any part thereof, or to any of the materials or other things [231] done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

Art. XVIII. It is hereby further mutually covenanted, promised and agreed, by and between the said parties, that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans and specifications hereinbefore referred to, or any other matter in connection herewith, the same shall be referred to three arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of a majority of them in the matter, shall be final and binding upon them.

Art. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of Forty-five Thousand (\$45,000.00) Dollars, conditioned, for the true and faithful performance of this contract on the part of the Contractor.

Art. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except as herein set forth. This agreement cannot be changed, altered or modified in any

respect except by the mutual consent of the parties endorsed hereon in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby certified that before the execution of this agreement he examined all the plans and specifications prepared in connection with the contract.

It is further agreed that the covenants, promises and agreements herein contained shall be binding and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:

SCANDINAVIAN-AMERICAN BUILD-
ING COMPANY.

By CHARLES DRURY,

Its President.

J. P. SHELDON,

Its Secretary.

BEN OLSON COMPANY,

Contractor.

O. B. OLSON,

President. [232]

Ben Olson Company Exhibit "B."

BEN OLSON COMPANY, a Corporation,
Claimant,

vs.

SCANDINAVIAN-AMERICAN BANK OF TA-
COMA and SCANDINAVIAN BUILDING
CO.,

Respondents.

LIEN CLAIM NOTICE.

Notice is hereby given that on the 27th day of February, 1920, Ben Olson Company, a corporation organized and existing under the laws of the State of Washington, and having its place of business at Tacoma, Pierce County, was, at the request of the Scandinavian-American Bank of Tacoma, and the Scandinavian Building Company, employed to furnish and construct all the plumbing and heating plant for the building, thereafter partially erected by said Bank and Building Company, upon Lots 10, 11 and 12, in Block 1003 of the official plat of "New Tacoma W. T." filed and recorded in the office of the Auditor of said Pierce County, February 3, 1875, of which property the owners and reputed owners were, and are, the said Scandinavian-American Bank of Tacoma, and Scandinavian-American Building Company.

That said Ben Olson Company commenced to furnish the materials for said plumbing and heating of said Building and to perform the labor of installing said materials on or about June 20, 1920, and con-

tinued to furnish said materials and perform said labor until January 15, 1921, when further prosecution of said work was stopped by the abandonment of construction of said building by said owners, and their refusal to further prosecute the same.

That the value of the materials so furnished by said Ben Olson Company was as follows, viz:

1. Materials actually furnished and deposited upon the premises for installation \$30,560.86.

2. Materials procured by said Ben Olson Company to be manufactured specially for said building according to the plans and specifications for the plumbing and heating thereof, and delivered by the manufacturers to said Ben Olson Company, in the City of Tacoma ready for use in said building \$21,293.42. Total materials \$51,854.28.

That the value of the labor performed in the installation of materials in said building was \$2,-237.80.

That no part of the value of said materials and labor has been paid except the sum of \$12,425.56, paid on account of materials deposited on the premises and the labor thereon; and

That the said Ben Olson Company claims a lien upon the property above described, for the unpaid portion of the value of said materials and labor, in the sum of \$41,666.52, less the amount of any lien which may be allowed to the Crane Company for materials furnished by it to said Ben Olson Company, for use in said building.

Dated, Tacoma, Washington, April 14, 1921.

BEN OLSON COMPANY,

By O. B. OLSON,

President.

State of Washington,
County of Pierce,—ss.

O. B. Olson, having been first duly sworn on his oath says: I am President of the Ben Olson Company, the claimant above named; I have read the foregoing claim and know the contents thereof, and believe the same to be just.

O. B. OLSON.

Subscribed and sworn to before me this 14th day of April, 1921.

F. E. HILBIBER,

Notary Public for Washington, Residing at Tacoma,
Pierce County. [233]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 25, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [234]

Reply of McClintic-Marshall Company to Cross-complaint of Ben Olson Company.

Comes now complainant, McClintic-Marshall Company, a corporation, by its attorneys Hayden, Langhorne & Metzger, and for reply to the cross-complaint of Ben Olson Company, a corporation, says:

I.

For reply to the 10th paragraph of said cross-complaint this complainant says that it has no knowledge or information sufficient to form a belief as to whether or not between July 1, 1920 and January 15, 1921, it furnished material for the Scandinavian-American Building Company in the sum of \$24,633.97, or any other sum and therefore denies the same and the whole and every part thereof.

II.

For reply to the 11th paragraph of said cross-complaint this complainant says that it has no knowledge or information sufficient to form a belief as to the matters and things therein alleged and therefore denies the same.

III.

For reply to the 12th, 13th, 14th, 15th, 16th, and 17th paragraphs of said cross-complaint this complainant says [235] that it is without knowledge or information sufficient to form a belief as to the matters and things therein alleged and it therefore denies the same.

IV.

For reply to that part of the 18th paragraph which alleges that if cross-complainant had been permitted to proceed with work under its contract it would have made a profit of \$8,029.77, this complainant says it has no knowledge or information sufficient to form a belief and therefore denies the same, and denies that the cross-complainant would

have made a profit as therein alleged of \$8,029.77 or any other sum.

E. M. HAYDEN,
MAURICE A. LANGHORNE,
F. D. METZGER,

Solicitors for Complainant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 25, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [236]

Answer of Scandinavian-American Building Company and F. P. Haskell, Jr., as Receiver, to Cross-complaint of Ben Olson Company.

Come now the defendants, Scandinavian-American Building Company, a corporation, F. P. Haskell, Jr., as receiver of the Scandinavian-American Building Company, a corporation, and J. P. Duke as Supervisor of Banks of the State of Washington, and answer the cross-complaint of the Ben Olson Company, a corporation, as follows:

I.

They deny that the Scandinavian-American Bank of Tacoma on November 1st, 1919, or at any other time intended to construct upon Lots 10, 11 and 12, Block 1003, Map of New Tacoma, W. T., any building for banking purposes or otherwise and that the said Scandinavian-American Bank of Tacoma on February 9th, 1920, or at any other time, acquired title to the said lot Ten, as set forth therein;

and they deny that the said Scandinavian-American Bank of Tacoma, by the expenditure of its own funds, or otherwise, procured the execution of the articles of incorporation of the Scandinavian-American Building Company, or caused, or procured such articles to be filed with the Secretary of the State of Washington or with the Auditor of Pierce County, or otherwise; and they deny that the said Scandinavian-American Bank of Tacoma did procure its director to organize the said corporation or to subscribe to the capital stock thereof [237] in its behalf or otherwise, and they deny that the incorporators of the said company, or the subscribers to the capital stock thereof, in so doing acted as agents of the said Scandinavian-American Bank of Tacoma; and they deny that the said Scandinavian-American Bank of Tacoma transferred to the Scandinavian-American Building Company title to Lots 11 and 12 without consideration, and they deny that the said Scandinavian-American Bank of Tacoma procured the Directors of the Scandinavian-American Building Company, as its own agents, or otherwise, to begin the construction of a building thereon, and they deny that the said defendant, the Scandinavian-American Bank of Tacoma, in any way procured or instigated any contract between the said defendant, Ben Olson Company, and the said Scandinavian-American Building Company, and they deny that any such contract was ever made on behalf of the said Scandinavian-American Bank of Tacoma.

II.

They deny that the said defendant, Ben Olson Company, furnished or delivered to the said premises plumbing or heating material of the value of \$24,633.07 or any other sum whatsoever, and demand strict proof thereof.

III.

They deny that the defendant, Ben Olson Company, procured ready for delivery plumbing or heating materials which are not adapted to use in any other building, of the value of \$8,125.60, or any other sum whatsoever, and demand strict proof thereof.

IV.

They deny that the said defendant procured from the Crane Company or otherwise eighty-six closets complete with fixtures adapted for said building, which are not adapted for any other building, to the value of \$6,132.66, or any other sum whatsoever, and demand strict proof thereof. [238]

V.

They deny that the said defendant, Ben Olson Company, procured from the Crane Company, or otherwise, toilet-room and lavatory materials and fixtures adapted only for use in the said building of the value of \$12,910.76 or any other sum whatsoever, and demand strict proof thereof.

VI.

These defendants have not knowledge or information sufficient to form a belief as to when the said defendant, Ben Olson Company, procured the materials and fixtures not actually delivered on the said

premises, or whether or not such fixtures could have been installed within the time provided in the contract of the said Ben Olson Company, and therefore denies the same.

VII.

These defendants deny that the said Ben Olson Company furnished and performed labor in the construction of the plumbing and heating of the said building of the value of \$2,279.80 or of any other value whatsoever, and demand strict proof thereof.

VIII.

These defendants allege that they have not knowledge sufficient to form a belief as to the sums paid to the said Ben Olson Company upon the said contract price, and therefore deny that only the sum of \$13,425.56 was so paid, and allege that the full contract price was paid.

IX.

These defendants allege that they have not knowledge or information sufficient to form a belief as to the amount necessary to complete the plumbing and heating contract, and therefore deny that the same could have been completed for the sum of \$27,888.34, and that the defendants, Ben Olson Company, would have earned a profit of \$8,049.77, or any other sum under the said contract.

X.

These defendants deny that the said defendants, Ben Olson [239] Company, was at all times ready, willing and able to proceed with the work under said contract, and would have proceeded with and completed the same, and would have earned a profit

of \$8,049.77 and deny that the Scandinavian-American Bank of Tacoma ceased further construction upon the said building and abandoned the same and deny that the said Scandinavian-American Building Company neglected and refused to pay the defendant Ben Olson Company the sum of \$14,-288.82 and deny that said sum was due the defendant under the terms of the said contract, and deny that the said defendant is, or at any time was ready, willing and able to deliver any material to the said Scandinavian-American Building Company, and deny that the said defendant, Ben Olson Company, was ever under any obligations to deliver anything to the said Scandinavian-American Bank of Tacoma, or had any contractual relations with the said Scandinavian-American Bank of Tacoma, with reference to the said building.

XI.

Defendants have not knowledge or information sufficient to form a belief as to whether or not the defendant, Ben Olson Company, filed the lien attached to its cross-complaint, marked Exhibit "B" or as to whether, or not, such lien, if filed, was filed within ninety days after the furnishing of the last material under the said contract, or as to whether or not the said lien was properly verified, and therefore deny the same, and these defendants object to any amendment of the said claim of lien in any manner whatsoever.

XII.

These defendants deny that the defendant, Ben Olson Company, has commenced no action for the

recovery of the sum due it upon the said contract, but allege that the said defendant, Ben Olson Company heretofore and before the filing of the said lien presented its petition to the Court in the above-entitled matter, and recovered specific property under the order of this [240] Court, which said property it is now seeking to include in its said lien.

XIII.

These defendants deny that the defendant, Ben Olson Company, did not know the true relation between the Scandinavian-American Bank of Tacoma, and the said Scandinavian-American Building Company at the time of the execution of the said contract.

XIV.

These defendants deny that the defendant, Ben Olson Company is entitled to recover any interest upon any of its said claims.

XV.

These defendants deny that the defendant, Ben Olson Company is entitled to any attorney's fees whatsoever in the above-entitled matter.

By way of a defense to the bill of complaint of the defendant, Ben Olson Company, these defendants allege:

I.

That the defendant, Ben Olson Company, dealt with the said defendant, Scandinavian-American Building Company, a corporation, as a corporate entity with reference to the matters and things set forth in its bill of complaint herein, and that

the said defendant, Ben Olson Company, thereby estopped itself from denying the corporate entity of the said defendant, Scandinavian-American Building Company, and estopped itself from denying the recitals contained in the said contract, to the effect that the said Scandinavian-American Building Company was erecting the said building on the property therein described and was the owner thereof.

By way of a second defense against the bill of complaint of the defendant, Ben Olson Company, these defendants allege:

I.

These defendants submit to the judgment of this Honorable Court but insist that if the defendant, Scandinavian-American Building Company, a corporation, was, in law, the agent of the [241] Scandinavian-American Bank of Tacoma, in the erection of the said building, as set forth by the defendant Ben Olson Company, that nevertheless, the said defendant, Ben Olson Company, has no lien against the said property in that the said defendant Ben Olson Company, in the furnishing of such materials and supplies to be used in the construction thereof did not mail to the said Scandinavian-American Bank of Tacoma notice, in writing, stating substantially that it had commenced the delivery of such materials and supplies for use therein, and that a lien might be claimed for the same, as it was required to do under the provisions of Section 1133 of Remington's Codes and Statutes

of Washington, as a prerequisite to the filing of such lien.

As a third defense against the bill of complaint of the defendant, Ben Olson Company, these defendants allege:

I.

That the defendant, Ben Olson Company, has, with knowledge of the facts, filed its lien as set forth in its bill of complaint herein, and has included therein nonlienable items, and has filed the said lien for an amount grossly in excess of the amount due it in truth and in equity, and that by reason thereof, the said defendant, Ben Olson Company thereby forfeited its right to any lien and its right to any equity at the hands of the Court.

As a fourth defense to the bill of complaint of the defendant, Ben Olson Company, these defendants allege:

I.

That the defendant, Ben Olson Company, by filing its claim with the liquidators of the said defendant, Scandinavian-American Bank of Tacoma, as set forth in its bill of complaint herein has estopped itself from proceeding upon its said bill of complaint herein.

As a fifth defense to the bill of complaint of the defendant, Ben Olson Company, these defendants allege: [242]

I.

That this Court has no jurisdiction in the above-entitled matter to allow the sum of \$8,029.77, as a claim against the property and assets of the said

Scandinavian-American Bank of Tacoma, in liquidation.

As a sixth defense against the bill of complaint of the defendant, Ben Olson Company, these defendants allege:

I.

That in the written contract made between the defendants and the cross-complainant, Ben Olson Company, and the defendants, Scandinavian-American Building Company, by its terms provides that the said defendants, Ben Olson Company, thereby agreed to waive any and all right to any materialman's lien or lien against the said premises, and thereby expressly agreed not to file any claim or lien whatsoever against the said premises, and thereby the said defendant, Ben Olson Company, estopped itself in this action from filing any such lien or from attempting to enforce the same.

And for a counterclaim against the defendant, Ben Olson Company, a corporation, these defendants allege:

I.

That the defendant, Ben Olson Company, by the filing of its lien as set forth in its bill of complaint herein and by filing its said bill of complaint herein, has passed the title to the property, materials and supplies which it alleges therein that it had ready for delivery at its storehouse to the said defendant, Scandinavian-American Building Company, and to the defendant, F. P. Haskell, Jr., as receiver thereof, and that the defendants are entitled to the delivery of the said property and to the sale thereof

in the above-entitled matter, or to judgment against the said defendant for the value thereof.

WHEREFORE, defendants pray that the prayer of the cross-complainant, Ben Olson Company, herein be in all respects denied.

F. D. OAKLEY,
KELLY & MacMAHON,
Attorneys for Defendants. [243]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 15, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [244]

Answer of Far West Clay Company to Amended and Supplemental Bill of Complaint and Counterclaim.

Comes now the Far West Clay Company, a corporation, one of the defendants in the above-entitled action and for answer to the amended and supplemental bill of complaint of the McClintic-Marshall Company, a corporation, therein,—

I.

Defendant alleges that it is without knowledge as to the facts, matters and things set forth in paragraph 14 of the said amended and supplemental bill of complaint, and it therefore denies the same and each and every part thereof.

II.

Defendant alleges that it is without knowledge as to the facts, matters and things set forth in paragraph 15 of the said amended and supplemental

bill of complaint, and it therefore denies the same and each and every part thereof.

III.

Defendant alleges that it is without knowledge as to the facts, matters and things set forth in paragraph 16 of the said amended and supplemental bill of complaint, and that it therefore denies the same and each and every part thereof.

IV.

Defendant alleges that it is without knowledge of the facts, matters and things set forth in paragraph 17 of the said amended and supplemental bill of complaint, and it therefore denies the same and each and every part thereof, except the allegation therein contained to the effect that the complainant in said bill filed its claim of lien, as therein set forth.

V.

Defendant denies that its lien, claim, right, title or interest in the premises referred to in paragraph 18 of the amended and supplemental bill of complaint, is junior or subsequent or inferior to the lien of complainant.

VI.

Defendant denies that the sum of Fifteen Thousand Dollars (15,000) is a reasonable attorney's fee, as set forth and alleged in paragraph 19 of the said amended and supplemental bill of complaint.
[245]

And for a further answer to the said amended and supplemental bill of complaint and as a counterclaim against the complainants therein and all

of the defendants named and set forth therein, with the exception of this defendant, defendant alleges:

I.

That it and the defendant the Scandinavian-American Building Company, and the Scandinavian-American Bank of Tacoma, are corporations, duly organized and existing under the laws of the State of Washington, and are citizens of the said State, and are residents of the Southern Division of the Western District of the State of Washington.

II.

Defendant further alleges that the defendants Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, constitute a copartnership doing business in Tacoma, Washington, under the name and style of Tacoma Millwork Supply Company, and all of said named defendants with the exception of Hattie Davis Tennant are citizens of the State of Washington, and the said Hattie Davis Tennant is a citizen of the State of California.

III.

Defendant further alleges that the defendant G. Wallace Simpson is a citizen and resident of the State of Missouri.

IV.

Defendant further alleges that in this action, and during the pendency thereof, Forbes P. Haskell,

one of the defendants therein, by an order of the above-entitled court duly and [246] regularly made, was appointed receiver of the Scandinavian-American Building Company, one of the defendants herein, and that he thereafter qualified, and is now acting as the receiver thereof, and that the said Forbes P. Haskell, as receiver, has been made a party defendant in this action, by an order of the Court duly made therein, and that by the said order leave has been granted to all of the parties in this action to sue him, and make him a party defendant to their counterclaims.

V.

Defendant further alleges that at the time of the beginning of this action, Claude P. Hay, was the duly appointed, qualified and acting State Bank Commissioner of the State of Washington, and that the defendant, Forbes P. Haskell, was the Deputy State Bank Commissioner of the State of Washington, and that both of the said parties were then and at all times hereinafter mentioned were citizens and residents of the State of Washington; that they had charge of the property and assets of the Scandinavian-American Bank of Tacoma, which was insolvent, and were charged with the supervision, handling, control and disposition of its assets, including the right to sell and dispose of any and all of its property with the title thereto, being vested by law in them; that since the beginning of this action the statutes of the State of Washington, with respect to the banking affairs of this state, have been changed, and that the control of the

banking operations of the said State have been vested in the Director of Taxation and Examination, who at present is E. L. Farnsworth, and that in pursuance of the said statutes the said E. L. Farnsworth appointed John P. Duke, Supervisor of Banking of the State of Washington, and that he in turn has appointed the defendant, Forbes P. Haskell, Special Deputy Supervisor of Banking of the State of Washington, liquidating the Scandinavian-American Bank of Tacoma, which is insolvent, who still is, and now has charge of the management [247] and control of the affairs of the Scandinavian-American Bank of Tacoma, with power to handle and dispose of all of the property under the direction of the said John P. Duke, and the said Forbes P. Haskell is now acting as such Special Deputy Supervisor of Banking of the State of Washington liquidating the Scandinavian-American Bank, aforesaid, and the said Forbes P. Haskell, as Special Deputy Supervisor as aforesaid, John P. Duke and E. L. Farnsworth, under the laws of the State of Washington, are charged with the disposition and handling of all of the property, business and affairs of the said Scandinavian-American Bank, and the liquidation thereof.

VI.

Defendant further alleges that the defendants, Savage-Scofield Company, Puget Sound Iron & Steel Works, E. E. Davis & Company, St. Paul & Tacoma Lumber Company, Henry Mohr Hardware Company, Inc., Hunt & Mottet, Edward Miller Cornice & Roofing Company, Washington Brick,

Lime & Sewer Company, United States Machine & Engineering Company, Colby Star Manufacturing Company, Tacoma Shipbuilding Company, and Ben Olson Company, are all corporations, organized and existing under the laws of the State of Washington, and citizens of said State. [248]

V.

Defendant further alleges that the defendant Otis Elevator Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen of said State, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of the State of Washington, relative to foreign corporations.

VI.

Defendant further alleges that the defendant Crane Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Illinois and a citizen of the said State, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of said State of Washington relative to foreign corporations.

VII.

Defendant further alleges that the defendant H. C. Greene, doing business as H. C. Greene Iron Works, the defendant, J. D. Mullins, doing business as J. D. Mullins Bros., that S. O. Matthews and Frank L. Johns are partners doing business under the name of City Lumber Agency, that Carl Gebbers and Fred S. Haines are copartners doing busi-

ness under the firm name and style of Ajax Electric Company, that Robert M. Davis and Frank C. Neal, are copartners doing business under the firm name and style of Davis & Neal, that S. J. Pritchard and C. H. Graves are copartners doing business as P. & G. Lumber Company, that Morris Kleiner is doing business as Liberty Lumber & Fuel Company, and that J. A. Soderberg is doing business as West Coast Monumental Company, and Theodore Hedlund is doing business as the Atlas Paint Company, and that they are all citizens of the State of Washington and residents of the Southern Division of the Western District of Washington. [249]

VIII.

Defendant further alleges that the defendants F. W. Madsen, Gustaf Jonasson, N. A. Hanson, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed. Lindberg, Joe Tikalsky, F. Menten, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Anfang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey and W. E. Morris are each and every one of them citizens of the State of Washington,

and residents of the Southern Division of the Western District of Washington.

IX.

Defendant further alleges that the matter and amount in the above-entitled action exceed, exclusive of cost, the sum or value of \$3,000.

X.

That at all the times hereinafter mentioned, the defendant, Scandinavian-American Building Company, a corporation, was and now is the owner and reputed owner of lots ten (10), Eleven (11) and twelve (12) in block one thousand and three (1003), as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," which was filed for record in the office of the auditor of Pierce County, Washington Territory, February 3d, 1875. [250]

XI.

That heretofore and on or about the 1st day of November, 1919, the said Scandinavian-American Bank of Tacoma, was the owner and in possession of Lots eleven (11) and twelve (12) in Block One Thousand and Three (1003), in said City of Tacoma, as the same are shown and designated upon a certain Plat entitled "Map of New Tacoma, W. T.," which was filed for record in the office of the Auditor of said Pierce County, February 3, 1875, with the building located thereon which it used as its bank building.

XII.

That thereupon, and on or about said 1st of November, 1919, said Scandinavian-American Bank

of Tacoma, desired and intended to construct upon the premises above described, and upon the adjoining lot ten (10) in said block 1003, a larger and more elaborate and costly building for its banking offices and other purposes and for that purpose and intent, it, on or about February 9, 1920, acquired from one Charles Drury, one of its directors, and his wife, the said lot 10, who conveyed said lot 10 to said Scandinavian-American Building Company for a consideration paid by said Scandinavian-American Bank of Tacoma.

XIII.

That prior thereto, and on or about November 18th, 1919, and in pursuance of its purpose to erect said building on said premises, the said Scandinavian-American Bank of Tacoma, by the expenditure of its own funds, procured certain of its Board of Directors, to wit: J. E. Chilberg and Gustaf Lindberg, to execute Articles of Incorporation of a corporation, to be known and designated as "Scandinavian-American Building Company," with a capital stock of Two Hundred Thousand Dollars, with powers as therein set forth; and caused and procured said Articles of Incorporation to be filed in the office of the Secretary of the State of Washington and in the office of the Auditor of said Pierce County. And said Articles of Incorporation designated as directors of said Scandinavian-American Building Company, for the first six months after [251] its incorporation, J. E. Chilberg, O. S. Larson, Jafet Lindeberg, Gustaf Lindberg, Charles Drury, James R. Thompson and

George G. Williamson, all of whom were directors and who included all of the directors of said Scandinavian-American Bank of Tacoma.

XIV.

That upon the filing of said Articles of Incorporation, said Scandinavian-American Bank of Tacoma, further procured certain of its said directors to organize said corporation, and to subscribe for the capital stock thereof, and their respective names, but not on their own behalf, but on the behalf of said Scandinavian-American Bank of Tacoma, and solely as its agents and trustees.

XV.

That thereafter, and on or about the 10th day of March, 1920, the said Scandinavian-American Bank of Tacoma, conveyed said Lots 11 and 12, Block 1003, New Tacoma, to said Scandinavian-American Building Company, by deed, without the payment of any consideration therefor by said Building Company, although the value of said premises was at least One Hundred Thousand Dollars.

XVI.

That thereupon, the said Scandinavian-American Bank of Tacoma further procured its said directors, as Directors of said Scandinavian-American Building Company, but in truth and in fact, as its own agents, and trustees, and in its behalf, to enter upon the construction of a sixteen-story steel and concrete bank and office building upon said premises, at an estimated cost of more than One Million Dollars, without any other assets or property than its capital stock, which was of no actual value, and

the said lots, upon which there was a mortgage lien of upward of Seventy Thousand Dollars. [252]

XVII.

That thereupon the said Scandinavian-American Bank of Tacoma procured its said directors to enter into a contract with the defendant, Far West Clay Company, hereinafter set forth, in the name of the Scandinavian-American Building Company, as the contracting party, but that the said contract was really in behalf of said Scandinavian-American Bank of Tacoma, and the builders' materials hereinafter referred to were furnished in pursuance of the said contract, and that at the time this defendant entered into the said contract with the Scandinavian-American Building Company, hereinafter referred to, and furnished the builders' materials hereinafter referred to, and at the time it filed its notice of lien hereinafter referred to it did not know of the acts set forth in the preceding five paragraphs of this counterclaim, and did not know that the Scandinavian-American Bank of Tacoma had caused the said Scandinavian-American Building Company to be incorporated in its interest, or that it caused the said contract hereinbefore referred to, to be made in its interest, in the name of the Scandinavian-American Building Company, or that it had a claim, or any interest, equitable or otherwise, in the said lots hereinbefore described, or in the said Scandinavian-American Building Company.

XVIIIA.

Defendant further alleges that prior hereto, and prior to May 28, 1921, it duly presented to Forbes P.

Haskell, as Receiver of the Scandinavian-American Building Company, its claim against said company for the builders' materials hereinbefore set forth, said claim being in writing and duly verified as required, and that at said time it presented to Forbes P. Haskell, as Deputy Supervisor of Banking of the State of Washington, liquidating the Scandinavian-American Bank of Tacoma, its claim for the said builders' materials, hereinbefore referred to, said claim being in writing, in accordance with the requirements of the said Deputy Supervisor of Banking, and setting forth the facts creating the liability of the said bank for the said builders' materials hereinbefore set forth. [253]

XVIII.

Defendant further alleges that on or about the 28th day of February, 1920, it entered into a written contract with the defendant, Scandinavian-American Building Company, a copy of which is hereto attached, marked Exhibit "A," and made a part hereof.

XIX.

That thereafter and in accordance with the terms of the said contract, this defendant, as requested from time to time, by the said Scandinavian-American Building Company, furnished and delivered to it for use in the construction of the building hereinafter referred to, certain builders' materials, consisting of builders' tiling and blocks made of clay for partitions, flooring beam covers, etc., referred to and set forth in the said contract at and for the prices therein set forth, which prices were then the

fair and reasonable value of the said builders' materials.

XX.

That the said builders' material consisted of 35,798 skew building blocks, referred to in the said contract as "skews," which were then of the fair and reasonable value of 25.3 cents each which price the said Scandinavian-American Building Company agreed in said contract to pay therefor.

XXI.

That the said builders' material further consisted of 18,225 key building blocks, which were then of the fair and reasonable value of 21.4 cents each, which price the said Scandinavian-American Building Company agreed in said contract to pay therefor; also 43,545 large "inter" building blocks, which were then of the fair and reasonable value of 25.3 cents each, which price the said Scandinavian-American Building Company agreed in said contract to pay therefor. [254]

XXII.

That the said builders' material further consisted of 6,819 beam covers, which were then of the fair and reasonable value of 20.6 cents each, which price the said Scandinavian-American Building Company agreed in said contract to pay therefor; that in addition this defendant furnished 28,897 small "inter" building blocks, which were then of the fair and reasonable value of 12.7 cents each, which price the said Scandinavian-American Building Co., agreed in said contract to pay therefor.

XXIII.

That the agreed price and fair and reasonable value of all of the said builders' materials was the sum of \$29,048.58, and that although payment of all of the said sum was demanded from the said defendant, Scandinavian-American Building Company, after the same became due, yet no part thereof has been paid except the sum of \$6843.07, which together with the allowance of \$40.17, makes a total credit of \$6883.24; that all of the said builders' materials were furnished and were used in the construction of certain steel store and office building, which was then being constructed by the said Scandinavian-American Building Co. on the lots and premises hereinbefore described, and that all of the said lots and premises are necessary for the convenient use and occupation of the said building.

XXIV.

Defendant further alleges that it began to furnish the said builders' materials on August 5th, 1920, and ceased to furnish and deliver the same on January 13th, 1921, and that by the terms of the said contract the amount due thereon, became due and payable within thirty days from the receipt by said building of said materials, and the date of the receipt of the last thereof was on January 13th, 1921. [255]

XXV.

That by the terms of the said contract this defendant agreed to deliver the said builders' materials F. O. B. the cars of its factory, to wit, at Clay City, Washington, at which place and on said

cars the same were all delivered at and within the dates hereinbefore set forth.

XXVI.

Defendant alleges that it has ever stood ready and willing and has offered to deliver all the balance of the said builders' materials needed in the construction of the said building, but that said defendant has declined and refused to receive any more thereof.

XXVII.

Defendant attaches hereto as Exhibit "B," an invoice showing the amount of the said builders' material and the date of the delivery thereof, and defendant alleges that it is entitled to interest on the various sums, set forth in said Exhibit "B," from and after thirty days from the delivery of the said builders' materials, as shown therein.

XXVIII.

Defendant further alleges that within ninety days after it ceased to furnish the said builders' materials, hereinbefore referred to, and on the 24th day of January, 1921, it filed a notice of lien in writing claiming a lien on the said building, hereinbefore referred to, and the lots on which it is situated, as hereinbefore described, for the amount due to it for the said builders' materials, and the said notice of lien was duly filed and recorded in the office of the auditor of Pierce County, Washington, on the 24th day of January, 1921, duly verified by the oath of the claimant, and a copy thereof is hereto attached, marked Exhibit "C," and is made a part thereof.

XXIV.

That said notice of lien claimed a lien on the said building and premises hereinbefore described, for the amount due it on the said builders' materials, under and by virtue of Section 1134 of Rem. Codes & Stat. of the State of Washington.

XXV.

That there is now due to this defendant for the said builders' materials the sum of \$22,165.34, and interest, as aforesaid, and that this defendant has been compelled to employ an attorney to foreclose and enforce its lien, and protect and preserve its interests arising thereunder; that under and by virtue of Section 1134 of Rem. Codes & Stat. of the State of Washington, it is entitled to a reasonable attorney's fee therefor, which it alleges and avers is the sum of \$1,500.00.

XXVI.

Defendant alleges that the complainant in the above-entitled action and each of the defendants therein, who are hereinbefore named and whose names are set forth in full in the caption or title to this answer, claim to have mortgages, liens or judgments, on the lots and premises hereinbefore described, and the building thereon, or claim to have some right, title or interest in and to said premises, or some part thereof, but defendant alleges that the said lien, judgment, right, title or claim is subject, secondary and subordinate to the lien of this defendant, hereinbefore set forth. That the Scandinavian-American Bank defendant claims to own the land and premises hereinbefore described and to

hold two mortgages thereon all of which are subject and subordinate to aforesaid lien.

WHEREFORE defendant prays that the complainant in the above-entitled action, and each of the said defendants therein, who are hereinbefore named as defendants in said action and whose names are set out in the caption herein to which reference is for their names to save repetition, may be required to answer the counterclaim [257] of this defendant, and set forth the nature, character and extent of their claims, demands, liens, judgments, or interests in and to the said building and premises, or any part thereof, and that upon the hearing hereof may each of their liens, judgments, right and title in and to the said building and premises, and any part thereof, be adjudged and decreed to be subject, secondary and subordinate to the lien of this defendant, hereinbefore set forth, and

Upon the hearing hereof may this defendant have judgment against the Scandinavian - American Building Company and the Scandinavian-American Bank of Tacoma for the sum of \$22,165.34 and interest as aforesaid, as well as an attorney's fee of \$1500, for foreclosing and enforcing this lien, and for its necessary costs and disbursements herein, and

May it be adjudged and decreed that this defendant has a valid first lien on the said building and the premises hereinbefore described, and may the said lien be foreclosed, and may the said building and premises be decreed to be sold for the satis-

faction of the judgment so found due to this defendant, according to the practice of this court, and

May the proceeds of the sale be applied to the satisfaction of the judgment of this defendant.

Further, this defendant prays that said defendants hereinbefore named and referred to and all persons claiming under them or either of them, subsequent to the filing and recording of your defendant's lien in the office of the auditor of Pierce County, Washington, either as purchasers or encumbrancers, lienors, or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in the said premises and every part thereof, and that it may have a judgment and execution against the defendant, Scandinavian-American Building Company, and the Scandinavian-American [258] Bank of Tacoma for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the satisfaction of its judgment. That this defendant or any other parties to this suit may become a purchaser at said sale, and that the officer executing the sale shall execute and deliver the necessary conveyances to the purchaser or purchasers, and that said purchaser or purchasers at said sale, may be let into the possession of said premises.

That this defendant may have such other further and general relief in the premises as equity may require.

R. S. HOLT,
Attorney for Defendant, Far West Clay Company.
[259]

Exhibit "A."

THIS AGREEMENT, made this 28th day of February, 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Far West Clay Company of Tacoma, Washington, hereinafter called the "Contractor," party of the second part,

WITNESSETH:

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the erection of a sixteen-story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003), as shown and designated upon a certain plat, entitled "Map of New Tacoma, W T.," of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said Far West Clay Company of Tacoma, Washington, is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish

10" Skews and Inters	at 25.3¢	each	f.	o.	b.	cars	Clay	City,	Wash.
10"Keys	" 21.4¢	"	"	"	"	"	"	"	"
Beam Covers	" 20.6¢	"	"	"	"	"	"	"	"
4 x 12-12 Partition Tile	" 9.5¢	"	"	"	"	"	"	"	"
6 x 12-	" " 12.5¢	"	"	"	"	"	"	"	"

There will be approximately 120,000 square feet of floor tile and approximately 110,000 square feet

of partition tile, to be made according to detail agreed upon,

under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

NOW THIS AGREEMENT WITNESSETH,

ART. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor, net cash, within thirty days from date of receipt of materials, said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract, and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the earliest possible moment.

ART. V. The said Contractor shall complete the several portions and [260] the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz.:

The said Contractor agrees to commence shipment of the aforementioned material within three months from the date of the contract, and to complete shipment of the entire order within five months.

ART. VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty beyond the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within the occurrence of such delay.

ART. XIII. The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

ART. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by this contract.

ART. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except as herein set forth. This agreement cannot be changed, altered or modified in any respect, except by the mutual consent of the parties endorsed hereon in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby cer-

tified that before the execution of this agreement he examined all the plans and specifications prepared in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding and final upon the heirs, executors, administrators and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

SCANDINAVIAN-AMERICAN BUILD-
ING CO.

By CHARLES DRURY,

Its President.

J. SHELDON,

Its Secretary.

By FAR WEST CLAY COMPANY,

Contractor.

By E. R. WHEELER,

President. [261]

Exhibit "B."

SCANDINAVIAN-AMERICAN BUILDING COMPANY IN AC-
COUNT WITH THE FAR WEST CLAY COMPANY.

		Dr.		Cr.
Aug.	5, 1920	Invoice rendered	712.70	
Sept.	2 "	By check		712.70
"	11 "	Invoice rendered	399.29	
"	30 "	" "	576.87	
Nov.	13 "	By check		976.16
"	6 "	Invoice rendered	510.05	
"	8 "	" "	417.45	
"	10 "	" "	582.91	
"	11 "	" "	428.43	
"	12 "	" "	417.45	
"	13 "	" "	417.45	
"	15 "	" "	417.45	
"	16 "	" "	417.45	
"	17 "	" "	697.75	
"	18 "	" "	423.78	
"	19 "	" "	424.04	
Dec.	27 "	By check		5,154.21
"	7 "	Allowance		40.17
"	4 "	Invoice rendered	881.89	
"	7 "	" "	571.78	
"	8 "	" "	421.06	
"	9 "	" "	580.22	
"	10 "	" "	506.00	
"	11 "	" "	607.96	
"	13 "	" "	570.55	
"	15 "	" "	427.57	
"	17 "	" "	570.30	
"	18 "	" "	571.53	
"	20 "	" "	427.57	
"	21 "	" "	419.22	
"	16 "	" "	702.83	
"	22 "	" "	596.07	
"	22 "	" "	571.78	
"	22 "	" "	571.06	
"	23 "	" "	427.57	
"	23 "	" "	428.33	
"	23 "	" "	428.43	

"	28	"	"	"	420.50
"	28	"	"	"	427.57
"	28	"	"	"	571.78
"	29	"	"	"	573.80
"	29	"	"	"	571.78
"	30	"	"	"	558.80
"	30	"	"	"	572.63
"	31	"	"	"	571.78
"	31	"	"	"	428.08
"	31	"	"	"	573.80
"	31	"	"	"	428.08
"	31	"	"	"	422.76
"	31	"	"	"	427.57
Jan.	3,	1921	"	"	572.03
"	3	"	"	"	428.64
"	3	"	"	"	571.78
"	4	"	"	"	571.78
"	4	"	"	"	422.51
"	5	"	"	"	428.08
"	5	"	"	"	428.43
"	7	"	"	"	428.08
"	7	"	"	"	573.80
"	10	"	"	"	522.83
"	13	"	"	"	426.90
					Total Debits
					29,048.58
					Credits
					6,883.24
					Bal. due
					22,165.34

[262]

SUMMARY.

3982 Flat Skew Building Blocks	25.3¢	1,007.45
31816 Ind " " " "	25.3¢	8,049.45
18225 Key " " " "	21.4¢	3,900.15
43545 Large Inter " " " "	25.3¢	11,016.89
28897 Small " " " "	12.7¢	3,669.92
6819 Beam Covers	20.8¢	1,404.72
Total		29,048.58
Credits		6,883.24
Balance due		22,165.34

Exhibit "C."

NOTICE OF LIEN.

NOTICE IS HEREBY GIVEN That the FAR WEST CLAY COMPANY, a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the claimant, claims a lien on that certain bank and office building or structure, which is now being erected on lots numbered Ten (10), Eleven (11) and Twelve (12), in Block numbered One Thousand and Three (1003), in that part of the City of Tacoma known as New Tacoma, according to the map and plat of New Tacoma, as filed in the office of the auditor of Pierce County, Washington; said lots and block being situate in the County of Pierce, and State of Washington; said lien is also claimed on the said lots, as the lots on which the said building is located and being constructed; that said lien is claimed for the price and value of certain builders' materials, which were furnished by claimant to the Scandinavian-American Building Company, at its request, for use in the construction of the said building, and which were so used; that the said builders' materials consisted of building tiling of various kinds, made of clay, which were furnished by claimant to said Scandinavian-American Building Company, under a contract by the terms of which claimant agreed to furnish the tiling for use in construc-

tion of the said building, of the kind and at the prices following, to wit:

10" Skews and Inters	at 25.3¢ each
10" Keys	" 21.4¢ "
Beam Covers	" 20.6¢ "
4 x 12-12 Partition Tile	" 9.5¢ "
6 x 12-12 " " "	" 12.5¢ "

which prices the said Scandinavian-American Building Company agreed to pay for the said tiling; the said tiling, by the terms of said contract, to be made according to details to be agreed upon; that said prices and sums above set forth were the fair and reasonable value of the said tiling; that in pursuance of the said contract, on August 5, 1920, claimant began to furnish the said builders' materials for the said building, and that on January 13th, 1921, it ceased to furnish the same, and the said day is the day on which it furnished the last of the said builders' materials, furnished by it; that under the said contract, claimant, between the dates aforesaid, furnished the said builders' materials, in the amounts and of the price as follows: [263]

3892 Flat Skew Building Blocks	25.3¢.....	1,007.45
31816 Ind " " "	25.3¢.....	8,049.45
18225 Key " "	21.4¢.....	3,900.15
43545 Large Inter " "	25.3¢.....	11,016.89
28897 Small " " "	12.7¢.....	3,669.92
6819 Beam Covers " "	20.6¢.....	1,404.72
		29,048.58

The said tiling or builders' materials were made according to the details agreed upon; that the total value and price of the said builders' materials so furnished is the sum of \$29,048.58, as above set forth; that no part of the sum due for the said builders' materials has been paid, except the sum of \$712.70, paid on September 2, 1920, the sum of

\$976.16, paid on November 13, 1920, and the sum of \$5154.21, paid on December 27th, 1920, and an allowance or credit of \$40.17; that said credit and payments amount to the total sum of \$6883.24; that there is now a balance due to claimant, for the said builders' materials, amounting to the sum of \$28,-165.34, which sum is unpaid; that the Scandinavian-American Building Co., hereinbefore referred to, is a corporation, and is now, and was at all times herein mentioned, the owner and reputed owner of the lots and premises hereinbefore described, together with the building or structure being erected thereon, claimant therefore claims a lien on the said building or structure, and on the said lots, as aforesaid, for the said sum of \$22,165.34.

FAR WEST CLAY COMPANY,

By E. R. WHEELER,

Its President,

Claimant.

State of Washington,
County of Pierce,—ss.

E. R. Wheeler, being first duly sworn says: I am the President of the Far West Clay Company, claimant in the above and foregoing notice of lien, and I make this affidavit for and in its behalf; I have read, and heard read, the above and foregoing notice or claim of lien, and I know the contents thereof, and I believe the same to be just.

E. R. WHEELER.

Subscribed and sworn to before me this 19th day of January, 1921.

[Seal] R. S. HOLT,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Filed by R. S. Holt. January 24, 1921. Lien Record 15, page 636, at 3.47 P. M. C. A. Campbell, County Auditor, Pierce County, Wash. By A. L. Kelly, Deputy. [264]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 10, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [265]

Answer of E. E. Davis & Company to Amended and Supplemental Bill of Complaint.

To the Honorable E. E. CUSHMAN, Judge of the District Court of the United States for the Western District of Washington, Southern Division:

Now come your orator E. E. Davis & Company, a corporation, as defendant, and for this its answer to complainant's amended and supplemental bill of complaint herein admits, denies and alleges as follows, to wit:

I.

Answering paragraph I of complainant's amended and supplemental bill, your orator states, that it has not sufficient knowledge or information to enable it to form a conclusion as to the truth of the facts

therein stated and it therefore denies each and every allegation in said paragraph I contained.

II.

Answering paragraphs II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII of complainant's amended and supplemental bill your orator on information and belief admits each and every allegation contained in said paragraphs.

III.

Answering paragraph XIV of said amended and supplemental bill your orator states that it has not sufficient knowledge or information to enable it to form a belief as to the allegations therein contained and it therefore denies said allegations and each of them.

IV.

Answering paragraph XV of said amended and supplemental bill your orator admits that during the year 1920, the said complainant delivered on cars at Tacoma, Washington, certain structural [266] steel, but it denies each and every other allegation in said paragraph contained.

V.

Answering paragraph XVI of said amended and supplemental bill your orator admits that approximately 2201 tons of the steel delivered by the complainant as aforesaid was used in the erection of the building and on the premises in said bill described.

VI.

Answering paragraph XVII of said amended and supplemental bill your orator states that it has not sufficient knowledge or information to enable it to

form a conclusion as to the truth of the facts therein stated so it denies each and every allegation in said paragraph XVII contained.

VII.

Answering paragraph XVIII of said amended and supplemental bill your orator states that it has not sufficient knowledge or information to enable it to form a belief as to the truth of the facts therein contained with reference to the defendants other than this defendant and it therefore denies all of said allegations and it further specifically denies all the allegations in said paragraph relating to this defendant except that this defendant claims and has a lien and interest in and to the premises in said bill described.

VIII.

Answering paragraph XIX and XX of said amended and supplemental bill your orator states that it has not sufficient knowledge or information to enable it to form a belief concerning the allegations in said paragraphs contained and it therefore [267] denies the said allegations and each of them.

**Cross-complaint as Against Complainant and Bill
of Complaint as Against Defendants Herein
Other Than This Cross-complainant.**

E. E. Davis & Company, a corporation, organized and existing under and by virtue of the laws of the State of Washington and a citizen of the said state brings this cross-bill of complaint against complainant McClintic-Marshall Co. and bill of

complaint against the Scandinavian-American Building Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and a citizen of said state, Scandinavian-American Bank, a corporation, organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, all citizens of the State of Washington, save Hattie Davis Tennant who is a citizen of the State of California, copartners doing business under the name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, a citizen of the State of Missouri, P. Claude Hay, State Bank Commissioner for the State of Washington, and a citizen of said State of Washington, and Forbes P. Haskell, Deputy State Bank Commissioner for the State of Washington and receiver of and for the defendant Scandinavian-American Building Company, and a citizen of the State of Washington, Savage-Scofield Company, a corporation, organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Puget Sound Iron & Steel Works, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, St. Paul & Tacoma Lumber Company, a corporation organized and existing under and by virtue

of the laws of the State of Washington and a citizen of said state, Far West Clay Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Henry, Mohr Hardware Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Hunt & Mottet, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Edward Miller Cornice & Roofing Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Washington Brick Lime & Sewer Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Otis Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey and a citizen of said state, and duly admitted to do business in the state of Washington by virtue of having complied with the laws of said State of Washington relative to foreign corporations, United States Machine & Engineering Company, a corporation organized and [268] existing under and by virtue of the laws of the State of Washington and a citizen of said state, Colby Star Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state, Tacoma Shipbuilding Company, a corporation organized and

existing under and by virtue of the laws of the State of Washington and a citizen of said state, Crane Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and a citizen of that state, but admitted to do business in the State of Washington by virtue of having complied with the laws of said State of Washington, relative to foreign corporations, Ben Olson Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and a citizen of said state, H. C. Greene doing business as H. C. Green Iron Works, citizen of the State of Washington, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, both citizens of the State of Washington, S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, both citizens of the State of Washington, J. D. Mullins doing business as J. D. Mullins Bros., a citizen of the State of Washington, S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, both citizens of the state of Washington, Morris Kleiner doing business as Liberty Lumber & Fuel Company, a citizen of the State of Washington, J. A. Soderberg doing business as West Coast Monumental Company, a citizen of the State of Washington, Theodore Hedlund doing business as Atlas Paint Company, a citizen of the State of Washington, F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain,

D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short; Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, Sherman Wells, Carl J. Geringer, George Geringer, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey, and W. E. Morris, all of whom are citizens and residents of the State of Washington, and Frederick Webber, a citizen and resident of the State of Pennsylvania, and thereupon your orator complainant says as follows:

I.

Your orator is now and at all times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is now and was at all said times a citizen of said state. [269]

II.

On information and belief defendant Scandinavian-American Bldg. Co. is now and was at all times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of the State of Washington and a citizen of said state

and a resident of the Southern Division of the Western District of the State of Washington.

III.

On information and belief the defendant Scandinavian-American Bank is now and was at all times hereinafter mentioned organized and existing under and by virtue of the law of the State of Washington and a citizen of said state and a resident of the Southern Division of the Western District of the State of Washington.

III-A.

On information and belief claimant McClintic-Marshall Company is a corporation and a citizen of the State of Pennsylvania.

IV.

On information and belief the defendants Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, constitute a copartnership, doing business in Tacoma, Washington, under the name and style of Tacoma Millwork Supply Company and all of said named defendants with the exception of Hattie Davis Tennant, are citizens of the State of Washington, and the said Hattie Davis Tennant is a citizen of the State of California. [270]

V.

On information and belief the defendant G. Wallace Simpson is now and was at the time of

the institution of this suit a citizen of the State of Missouri.

VI.

That defendant Claude P. Hay was at the time of the filing of the amended and supplemental bill herein, ever since then has been and now is the duly appointed, qualified and acting State Bank Commissioner of and for the State of Washington. That the defendant Forbes P. Haskell was at the time of the filing of said amended and supplemental bill, ever since then has been and now is the duly appointed, qualified and acting Deputy State Bank Commissioner for the State of Washington and the duly appointed qualified and acting receiver of the said Scandinavian-American Building Company and that the said Claude P. Hay and Forbes P. Haskell during all of said times were and are now citizens of the Southern Division of the Western District of Washington.

VII.

On information and belief the defendants Savage-Scotfield Company, Puget Sound Iron & Steel Works, St. Paul and Tacoma Lumber Company, Far West Clay Company, Henry Mohr Hardware Company, Inc., Hunt & Mottet, Edward Miller Cornice & Roofing Company, Washington Brick Lime & Sewer Company, United States Machine & Engineering Company, Colby Star Manufacturing Company, Tacoma Shipbuilding Company, and Ben Olson Company, are all now and were at all times herein stated corporations, organ-

ized and existing under the laws of the State of Washington and citizens of said state. [271]

VIII.

On information and belief the defendant Otis Elevator Company is now and was at all times herein stated a corporation, duly organized and existing under and by virtue of the laws of the State of New Jersey and a citizen of said state, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of the State of Washington relative to foreign corporations.

IX.

On information and belief the defendant Crane Company is now and was at all times herein stated a corporation, duly organized and existing under and by virtue of the laws of the State of Illinois and a citizen of said state, but has been admitted to do business in the State of Washington by virtue of having complied with the laws of said State of Washington relative to foreign corporations.

X.

On information and belief the defendant H. C. Greene, doing business as H. C. Greene Iron Works, the defendant J. D. Mullins, doing business as J. D. Mullins Bros., S. G. Matthews and Frank L. Johns, a copartnership doing business under the name of City Lumber Agency, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of

Davis & Neal, S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Company, Theodore Hedlund doing business as the Atlas Paint Company, are all citizens of the State of Washington [272] and residents of the Southern Division of the Western District of Washington.

XI.

On information and belief the defendants F. W. Madsen, Gustaf Jonasson, N. A. Hanson, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, Sherman Wells, Carl J. Gerringier, George Gerringier, F. R. Schoen, A. W. Aufang, C. H. Boedecker, William L. Owen, F. N. Bergen, F. H. Godfrey and W. E. Morris are each and every one of them citizens of the State of Washington, and residents of the Southern Division of the Western District of Washington.

XII.

On information and belief defendant Frederick

Webber was at all of said times and is now a citizen and resident of the State of Pennsylvania.

XIII.

Your orator represents and shows to the Court that the matter and amount involved in the above-entitled action and also the claim of your orator exceeds exclusive of interest and costs the sum or value of \$3000.00. [273]

XIV.

That ever since prior to the institution of this suit the defendant Scandinavian-American Building Company, a corporation, has been and still is the owner of Lots 10, 11 and 12 in Block 1003 as the same are shown and designated upon a certain plat entitled Map of New Tacoma, W. T., which plat was filed on record in the office of the Auditor of Pierce County, W. T., February 3rd, 1875.

XV.

That on or about the 28th day of February, 1920, your orator entered into a contract in writing with the defendant Scandinavian-American Building Company by the terms of which it was provided that your orator would receive on board cars, erect and paint one coat of graphite or equal paint, all structural steel used in the construction of a building then proposed to be erected on the lots hereinbefore mentioned. Said work to be performed according to certain plans and specifications prepared by Frederick Webber, architect, and the said steel to be furnished by the said owner. That by the said contract it was also provided that the

said owner would pay your orator for the work performed as aforesaid the sum of \$19.00 per ton of the steel erected, the payments of which would be made to your orator in monthly installments, each installment to be 75% of the estimated value of the steel erected at the date of said estimate and the balance to be paid within thirty to sixty days from the acceptance of the work by the architect. That a true and correct copy of said contract is hereto attached and marked Exhibit "A." [274]

XVI.

That thereafter, to wit, on or about the 14th day of June, 1920, the plaintiff entered upon the performance of the work contemplated by the said contract and continued in the performance of the same thereafter until the 15th day of January, 1921. That as the said work progressed your orator was paid by said owner from time to time on monthly estimates for 75% of the estimated value of the steel then erected in compliance with the terms of the said contract amounts aggregating the sum of \$13,865.82; that on the 31st day of December, 1920, there became due from the said owner and payable to your orator for work performed under the terms of said contract during the said month of December the sum of \$10,425.94, that your orator on January 4th, 1921, duly presented to the said owner its estimate in the form and manner previously used and accepted, showing your orator to be entitled to the said sum of \$10,425.94, for work performed by it during said month of December, and demanded payment there-

for; that the owner then approved said estimate but failed and refused and still fails and refuses to pay the said sum or any portion thereof; and the said owner thereafter, to wit, on or about the 17th day of January, 1921, wholly abandoned the said building construction, because it was wholly insolvent, refused payment to your orator for this reason, and through its building superintendent informed your orator of said facts and directed your orator to cease its erection work on said building and to remove all its equipment from the said building and premises; that your orator thereupon, and for said reasons, and others hereinafter mentioned ceased all its labors on said building and thereafter treated and considered the said contract as rescinded. [275]

XVII.

That while it was provided by Article XIV of the contract herein set out that your orator would waive any claim or mechanics' liens, your orator hereby states that such waiver was induced and obtained solely by the representations and assurances made to your orator at the time of the negotiations for said contract, which representations and assurances were made by the said owner and by others for it made in the presence and hearing of the said owner and with its full knowledge and consent, which representations and assurances were to the following effect:

a. That the said owner then had on hand the sum of \$400,000.00 which it intended to and would

expend in the first construction work of the said building.

b. That it had made definite and final arrangements to borrow by mortgage on the premises to be covered by the construction work from a party ready, willing and able to loan the same the sum of \$600,000.00 which sum would be used in financing the completion of the construction of said building and that the said sum would be amply sufficient for said purpose, and

c. That all contracts for material and labor that would enter into the construction of the said building would contain the same lien waiver provisions.

That had these representations and assurances been true the building would have been fully financed and all labor and material would have been paid for and the necessity for any claims or liens would have been removed.

XVIII.

That your orator believing in the truth of the said representations and assurances and fully relying thereon and not otherwise and being solely induced thereby agreed to the waiver [276] article in said contract, but that in truth and in fact the said representations and assurances were false and untrue and were known to be false and untrue by the owner at the time they were made; that the falsity of the said representations and assurances was not discovered by your orator until the 17th day of January, 1921. That by reason of the foregoing facts the owners herein became thereby and still are estopped to set up the said

article of waiver of mechanic's lien as against your orator.

XIX.

That because of the facts herein mentioned the contract between the said owner and your orator became and was rescinded and thereafter, to wit, on or about the 25th day of April, 1921, your orator notified the said owner of his election to treat said contract as rescinded; a true and correct copy of which notice is hereto attached and marked Exhibit "B."

XX.

That the reasonable value of your orator's labor in the performance of its work in the erection and painting of the steel put in place by it as herein set forth was and is the sum of \$40,949.75, of which it has been paid by the said owner the sum of \$13,-865.82 and no more, leaving a balance due to your orator for the work so performed by it the sum of \$27,083.93.

XXI.

That between the 6th day of October, 1920, and the 15th day of January, 1921, your orator on written requests and orders of and from the said owner so to do performed additional and extra work in connection with the erection of said steel on said building the reasonable value of which additional and extra work was and is [277] the sum of \$3,056.52, of which but \$518.79 has been paid to your orator, although demand has been made therefore to the said owner, leaving a balance due your orator on this item in the sum of \$2,537.73.

XXII.

That under a written order and request therefor by the said owner dated December 28th, 1920, your orator performed certain necessary additional and correction labor in the preparation of certain portions of the said structural steel for fitting the same into the said building, all of which steel so corrected was by your orator thereafter set into the said building, the reasonable value of which said labor was and is \$722.03, no part of which has been to your orator paid, although demand for the same has been by your orator made on said owner. That a true and correct copy of said written order is hereto attached marked Exhibit "C."

XXIII.

That your orator also shows that all of the labor performed by it as aforesaid was upon the building situated on the lots hereinbefore described, said lots and building being owned by the defendant Scandinavian-American Building Company, and all of said lots were necessary for the construction and convenient use of the said building; that the total balance due to your orator from said owner for all of the work hereinabove mentioned exclusive of interest and costs is the sum of \$30,343.69.

XXIV.

That your orator being without any security for the payment of the amount due to it from the said owner as hereinabove [278] mentioned on the 8th day of April, 1921, duly prepared, filed and recorded with the County Auditor of and for Pierce County, Washington, said county being the one in

which the above-mentioned property is situated, its claim of lien against the said premises and the whole thereof, which claim of lien was duly verified by oath, said lien being filed under and by virtue of the mechanic's lien law, which was at all of said times and still is in full force and effect in said state. Said lien was by the Auditor of and for said county recorded at page 64 in volume 16 of the lien records of and for said county, a true and correct copy of which lien is hereto attached marked Exhibit "D."

XXV.

That your orator is not now prosecuting, neither has it ever prosecuted any action either at law or in equity or any proceeding whatsoever for the recovery of the debt claimed by it as hereinabove set out or any portion thereof, that it has been compelled to employ the services of attorneys and counsel to protect and preserve its interest in the preparation and filing of the said lien claim and in the further protection and preservation of its interests in this proceeding; that the reasonable charge and fee for said services is \$7500.00.

XXVI.

Your orator further shows that the defendants Scandinavian-American Bank, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, copartners doing business under the name and style of Tacoma

Millwork Supply [279] Company, P. Claude Hay, as State Bank Commissioner, Forbes P. Haskell as Deputy State Bank Commissioner and as receiver of Scandinavian-American Building Company, Savage Scofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick Lime & Sewer Company, a corporation, Otis Elevator Company, a corporation, United States Machine & Engineering Company, a corporation, Colby Star Manufacturing Company, a corporation, Tacoma Shipbuilding Company, a corporation, Crane Company, a corporation, and Ben Olson Company, a corporation, H. C. Greene doing business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves, copartners doing business as P. & G. Lumber Company, Morris Kleiner doing business as Liberty Lumber & Fuel Company J. A. Soderberg doing business as West Coast Monumental Company, Theodore Hedlund doing business as Atlas Paint Company, F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Bus-

kirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcellino, M. Swanson, William Griswold, C. E. Olson, [280] C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boecker, William L. Owen, F. N. Bergen, F. H. Godfrey, and W. E. Morris and Frederick Webber, Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis & Neal, and complainant McClintic-Marshall Company, a corporation, respectively, have or claim to have some right, title, lien or interest in and to said premises, but whatever the nature of said right, title, interest or claim may be if any they have, the same is junior, subsequent and inferior to the lien of your orator.

WHEREFORE YOUR ORATOR PRAYS:

1. That the said McClintic-Marshall Company and each of the defendants hereinabove named be required to make answer respectively unto all and singular the matters hereinbefore stated and charged as fully and as particularly as if the same were herein expressed, and they thereunto particularly interrogated, but not under oath, answer under oath being hereby expressly waived.

2. That your orator may have a judgment against the said Scandinavian-American Building Company for the full sum of \$30,343.69, together with interest thereon at the rate of six per cent per annum from the 15th day of January, 1921, until paid together with the further sum of \$7,500.00 as attorneys' fees for service in this cause and for all your orator's costs and expenses herein incurred or to be incurred and that the same may be adjudged a first and valid lien against the lands and premises hereinabove described; that said lands and premises and building thereon be decreed to be sold in satisfaction of the amount so found due to your orator [281] according to law and the practice of this Court and that the proceeds of such sale be applied in the payment of the costs of these proceedings and sale, of the said sum of \$7,500.00 as attorney's fees and your orator's claim amounting to \$30,343.69 with interest thereon as hereinabove specified.

3. That the complainant McClintic-Marshall Company and each of the defendants herein and all persons claiming under them or either of them subsequent to the filing and recording of your orator's lien as herein stated, either as purchasers or encumbrancers, lienors, or otherwise may be barred and foreclosed of all right, claim or equity of redemption in the said premises and every part thereof; that your orator or any other party to this suit may be a purchaser at said sale and that the officer executing the sale herein shall execute and deliver the necessary conveyances to such pur-

chaser or purchasers and that the purchaser or purchasers at said sale be given possession of said premises, and,

4. That your orator may have such other and further orders, judgments and relief in the premises as may to your Honor seem just, equitable and proper.

MAY IT PLEASE YOUR HONOR to grant to your orator writs of subpoena to be directed to the said complainant and to each of the aforesaid defendants to wit: Scandinavian-American Building Company, a corporation, Scandinavian-American Bank, a corporation, Ann Davis and R. T. Davis, Jr., as executors of the estate of R. T. Davis, deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant, and Ann Davis, copartners doing business under the name and style of Tacoma Millwork Supply Company, G. Wallace Simpson, P. Claude Hay, as State Bank [282] Commissioner for the State of Washington, and Forbes P. Haskell, as Deputy State Bank Commissioner for the State of Washington and as Receiver of the Scandinavian-American Building Company, Savage Scofield Company, a corporation, Puget Sound Iron & Steel Works, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Far West Clay Company, a corporation, Henry Mohr Hardware Company, Inc., a corporation, Hunt & Mottet, a corporation, Edward Miller Cornice & Roofing Company, a corporation, Washington Brick Lime & Sewer Com-

pany, a corporation, Otis Elevator Company, a corporation, United States Machine & Engineering Company, a corporation, Colby Star Manufacturing Company, a corporation, Tacoma Shipbuilding Company, a corporation, Crane Company, a corporation, and Ben Olson Company, a corporation, H. C. Greene doing business as H. C. Greene Iron Works, Carl Gebbers and Fred S. Haines, copartners doing business under the firm name and style of Ajax Electric Company, S. O. Matthews and Frank L. Johns, copartners doing business under the firm name and style of City Lumber Agency, J. D. Mullins doing business as J. D. Mullins Bros., S. J. Pritchard and C. H. Graves copartners doing business as P. & G. Lumber Company, Morris Kleiner doing business as Liberty Lumber & Fuel Company, J. A. Soderberg, doing business as West Coast Monumental Company, Theodore Hedlund doing business as Atlas Paint Company, F. W. Madsen, Gustaf Jonasson, N. A. Hansen, A. J. Van Buskirk, C. W. Crouse, F. L. Swain, D. A. Trolson, Fred Gustafson, E. Scheibal, Paul Scheibal, F. J. Kazda, W. Donnellan, P. Hagstrom, Arthur Purvis, Roy Farnsworth, C. B. Dustin, L. J. Pettifer, Charles Bond, L. H. Broten, W. Canaday, L. R. Lilly, F. McNair, Dave Shields, Ed Lindberg, Joe Tikalsky, F. Mente, C. Gustafson, George Larson, F. Marcelino, M. Swanson, William Griswold, C. E. Olson, C. I. Hill, Emil Johnson, C. Peterson, Earl Whitford, F. A. Fetterly, Thomas S. Short; and Robert M. Davis and Frank C. Neal, copartners doing business under the firm name and style of Davis

& Neal, Sherman Wells, Carl J. Gerringer, George Gerringer, F. R. Schoen, A. W. Aufang, C. H. Boecker, William L. Owen, F. N. Bergen, F. H. Godfrey and W. E. Morris and Frederick Webber, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named to be and appear before your Honor in this Honorable Court, then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide and perform such other and further orders or decrees as to your Honor shall seem meet and just.

E. E. DAVIS & COMPANY, a Corporation.

By JAMES W. REYNOLDS,

Attorneys for Defendant and Cross-complainant.

PETERS & POWELL,

Of Counsel. [283]

Exhibit "A."

THIS AGREEMENT, made this 28th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and E. E. Davis Co., a corporation organized and existing under the laws of the State of Washington, hereinafter called the "Contractor," party of the second part,

WITNESSETH:

WHEREAS, the said Scandinavian-American

Building Company, Owner, is about to begin the erection of a — story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11) and Twelve (12) in Block One Thousand Three (1003), as shown and designated upon a certain plat entitled "Map of New Tacoma, W. T." of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said E. E. Davis Co., a corporation, is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to receive on board cars and erect all structural steel; also to give all steel one coat of graphite, or equal paint; also to store material in yard, if necessary, at contractor's expense, as per your estimate of February 21, 1920. There is to be approximately 2,000 ton of steel to be erected, under and subject to all terms, limitations and conditions contained in the plans and specifications herebefore referred to.

NOW THIS AGREEMENT WITNESSETH:

ART. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor, the sum of nineteen dollars (\$19.00) per ton in installments as hereinafter stated. Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible, yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows:

75% monthly, to be paid in cash, of the estimated value of steel erected, and the balance of 25% to be paid within thirty (30) to sixty (60) days from the acceptance of work by the architect.

ART. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans and specifications made by said Architect, which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at length herein set forth, and the said Contractor is to include and do all necessary work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this contract, and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. And

the said Contractor further covenants and agrees to perform the work promptly, without notice on the part of anyone, so as to complete the building at the earliest possible moment. [284]

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building, without notice from anyone, and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz.: Steel to be erected as fast as the delivery of steel will allow.

ART. VI. Should the Contractor be delayed in the progress of the work under this contract by strike, or common carrier, or casualty wholly beyond the control of the Contractor, then the time herein designated for the completion of said work shall be extended for a period equivalent to the time lost, but no such allowance shall be made unless a claim therefor is presented in writing by the Contractor within twenty-four hours of the occurrence of such delay.

ART. VII. And in case of default in any part of the said work within the times and periods above specified, the Contractor hereby promises and agrees

to pay the Owner, and the Owner may deduct from any amount coming to the Contractor the sum of — Dollars for each and every day's delay until the completion of the work, not in the nature of a penalty, but in the nature of liquidated damages for the delay caused to the Owner in the completion of the work.

ART. VIII. Any imperfect workmanship or other faults which may appear within one year after the completion of said work, and in the judgment of said Architect arising out of improper materials or workmanship, shall, upon the direction of said Architect, be amended and made good by, and at the expense of, said Contractor, and in case of default so to do, the Owner may recover from said Contractor, the cost of making good the work.

ART. IX. The Contractor hereby agrees to remove the dirt and rubbish accumulating on the premises, caused by the construction of his work, at such time or times as he may be instructed by the Owner or his representatives and if not removed promptly by the Contractor, the Owner is hereby authorized to remove the same at the expense of the said Contractor, and to deduct the cost thereof from any balance that may be due and owing him.

ART. X. And should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of materials of the proper quality or fail in any respect to prosecute the work with promptness and diligence or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being cer-

tified by the Architect of the Owner, the latter shall be at liberty after two days' written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the contractor under this contract; and if the Architect or the Owner shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, the latter shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under [285] this contract shall exceed the expense incurred by the Owner in finishing the work said excess shall be paid *b* the Owner to the Contractor; but if said expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing the materials or for finishing the work and any damage incurred through such default shall be itemized and certified by the Owner, which itemized statement shall be conclusive upon the Contractor.

ART. XI. And the Owner reserves the right, that if there be any omission or neglect on the part of the said Contractor of the requirements of this agreement and the drawings, plans and specifications, the said Owner may, at its discretion, declare this contract, or any portion thereof, forfeited; which declaration and forfeiture shall exonerate, free and discharge the said Owner from any and all obligations and liabilities arising under his contract, the same as if this agreement had never been made; and any amount due the Contractor by reason of work done or materials furnished prior to the forfeiture of this contract, shall be retained by the said Owner until the full completion and acceptance of the building upon which said work has been done or said materials furnished, at which time the said Owner, after deducting all costs and expenses occasioned by the default of the said Contractor, shall pay or cause to be paid to him the balance with a statement of all said costs and expenses.

ART. XII. And the Contractor further covenants, promises and agrees that he will make no charge for any extra work performed or materials furnished in and about his contract, and he hereby expressly waives all right to any such compensation, unless he shall first receive an order in writing for the same from the Owner.

ART. XIII. And the Contractor hereby assumes entire responsibility and liability in and for any damage to persons or property during the fulfillment of this contract, caused directly or indirectly by the Contractor, his agents or employees, and the

Contractor agrees at his own expense to carry sufficient liability and workmen's compensation insurance and to enter in and defend the Owner against, and save it harmless from loss or annoyance by reason of suits or claims of any kind on account of such alleged or actual damages; or on account of alleged or actual infringements of patents in regard to any method, device or apparatus, or any part thereof, put in, under, or in connection with this contract, or used in fulfilling the same.

The Contractor hereby further agrees not to assign or sublet in any manner whatsoever, any part or portion of this contract, without the written consent of the Owner, upon the express penalty of forfeiture of the entire contract, in the discretion of the Owner.

ART. XIV. And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all right to any mechanic's claim or lien against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract.

ART. XV. And the Contractor shall at all times, when required by the Owner, before receiving any moneys under this contract, produce satisfactory vouchers and receipts from all employees and materialmen for work done and materials furnished in and about the erection and completion of the building covered by this contract.

ART. XVI. And any and all work that may be cut out and omitted from this contract, during the

progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts. [286]

ART. XVII. The Owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part thereof, or to any of the materials or other things done, furnished and supplied by the Contractor, used and employed in finishing and completing the same.

ART. XVIII. It is hereby further mutually covenanted, promised and agreed, by and between the said parties, that in the event of any dispute or disagreement hereafter arising between them as to the character, style or portion of the work on said buildings to be done, or materials to be furnished under this contract, or the plans and specifications hereinbefore referred to, or any other matter in connection herewith, the same shall be referred to three arbitrators, one to be chosen by each of the parties hereto, and the third by the two arbitrators so selected, whose decision, or that of a majority of them in the matter, shall be final and binding upon them.

ART. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of Nineteen Thousand no/100 Dollars, conditioned for the true and faithful performance of this contract on the part of the Contractor. Bond, however, to be paid for by Owner.

ART. XX. All negotiations and agreements, oral or written, prior to this agreement, are merged herein and there are no understandings or agreements, verbal, written or otherwise, between the said parties except as herein set forth. This agreement cannot be changed, altered or modified in any respect except by the mutual consent of the parties endorsed herein in writing and duly executed.

The Contractor has read and fully understands this agreement and the said Contractor hereby certifies that before the execution of this agreement he examined all the plans and specifications prepared in connection with the contract.

And it is further agreed that the covenants, promises and agreements herein contained shall be binding and final upon the heirs, executors and successors of the parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

SCANDINAVIAN-AMERICAN BUILD-
ING CO.,

By CHARLES DRURY,
Its President.

J. SHELDON,
Its Secretary.

E. E. DAVIS,
Contractor. [287]

Exhibit "B."**NOTICE OF RESCISSION OF CONTRACT.**

To Scandinavian-American Building Company,
Tacoma, Washington.

Gentlemen:

We assume that from what has transpired between your company and us with reference to the abandonment of the construction work on your bank building at 11th Street and Pacific Avenue in Tacoma, Washington, you understand that the contract between your company and us for construction work on said building has long since been rescinded, but if such is not your understanding, we write to say to you that we have elected to rescind, and we do now rescind the said contract because of the breach thereof by your company and because of the abandonment by you of the construction work provided for in said contract and further because of the false and fraudulent representation and statements made to us by you and by others in your presence and hearing and with your knowledge and consent; which false and fraudulent statements and representations induced us to sign the said contract.

E. E. DAVIS & COMPANY.

(Corporate Seal) (Signed) By E. B. DAVIS,

Pres. [288]

Exhibit "C."

SCANDINAVIAN-AMERICAN BUILDING CO.

Phone Main 2036.

Tacoma, Washington.

December 28, 1920.

E. E. Davis & Company,

Contractors & Steel Erectors,

Scandinavian-American Bank Bldg.,

Tacoma, Washington.

Gentlemen:

On or about March 5, 1920, the Scandinavian-American Building Company entered into a written agreement with McClintic, Marshall Company of Pittsburgh, Pa., whereby the said McClintic, Marshall Company guaranteed to deliver the steel frame for the above named bank building in the City of Tacoma not later than June 5, 1920. The McClintic, Marshall Company failed to make delivery of said steel until on or about the 10th day of October, 1920, and by reason of such delay and the failure on the part of the McClintic, Marshall Company, the Scandinavian-American Building Company have refused to pay the said McClintic, Marshall Company a certain amount of money claimed as liquidated damages by reason of the breach of said contract and, as a result thereof, the McClintic, Marshall Company, we understand, have notified you that they will not pay for any further alterations or corrections which may have to be made in the steel frame.

Now, this letter is to advise you that you will please have any necessary changes made or errors corrected in order to have said steel frame put up in a workmanlike manner and that you will keep a strict accounting of said errors and changes which may be chargeable to the McClintic, Marshall Company under their contract so that the amount may be properly entered upon the books of the Building Company and a true accounting made with McClintic, Marshall Company, and this letter will be your guarantee that any such changes made or errors corrected will be paid for by the Scandinavian-American Building Company and charged to the McClintic, Marshall Company on their books.

Very truly yours,

SCANDINAVIAN-AMERICAN BUILD-
ING COMPANY,

(Signed) By CHARLES DRURY,
President.

(Signed) J. SHELDON,
Secretary. [289]

Exhibit "D."

E. E. DAVIS & COMPANY, a Corporation,
Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING
COMPANY, a Corporation,

Owner.

NOTICE OF CLAIM OF LIEN.

NOTICE IS HEREY GIVEN, That on the 14th day of June, 1920, the above named claimant, E. E.

Davis & Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, at the special instance and request of the above named owner, the Scandinavian-American Building Company, a corporation duly organized and existing under and by virtue of the laws of the State of Washington (said request and employment being made through its officers Charles Drury, president, and J. Sheldon, secretary), commenced to perform labor in the erection of the steel in and upon a certain building then being constructed and thereafter continued to be constructed upon certain lots in Tacoma in Pierce County, Washington, that is to say, upon and covering the whole of lots 10, 11 and 12 in Block 1003, as the same are shown and designated upon a certain plat entitled Map of New Tacoma, W. T., which plat was filed of record February 3rd, 1875, and is now of record in the office of the Auditor of Pierce County, Washington; of all of which property the said Scandinavian-American Building Company was at all times during the year 1920 and still is the owner or reputed owner. That after the commencement of the performance of the labor above-mentioned the said E. E. Davis & Company continued in the performance of the same until the cessation thereof which occurred on January 15th, 1921.

That the labor performed by E. E. Davis & Company under the employment of the said owner as hereinabove mentioned was and is of the reasonable value of \$40,949.75, no part of which has been paid to the claimant excepting the sum of, \$13,865.82,

leaving a balance due to the said claimant for labor performed on said building the sum of \$27,083.93, for which amount claimant hereby claims a lien on the building and premises herein described.

That at the request of the said Scandinavian-American Building Company made through its said officers and through its agent Sherman Wells who was then its building superintendent and building inspector in charge of the construction of the said building, the said E. E. Davis & Company on the 5th day of November, 1920, commenced to perform labor on extra work in the construction of said building situate on lots in Tacoma in Pierce County, Washington, that is to say, on the whole of lots 10, 11 and 12 in Block 1003 as the same are shown and designated upon a certain plat entitled Map of New Tacoma, W. T., which plat was filed of record February 3rd, 1875, and is now of record in the office of the Auditor of Pierce County, Washington; of all of which property the said Scandinavian-American Building Company was throughout [290] the year 1920 and still is the owner or reputed owner. That the said claimant thereafter continued in the performance of said labor on said building until it ceased the performance of the same on the 15th day of January, 1921. That the reasonable value of the labor performed by this claimant upon the said building under the employment herein last before stated was and is the sum of \$3,056.52, of which sum no part has been paid, excepting the sum of \$518.79, leaving a balance due to this claimant for labor on said building the sum of \$2,537.73, for which amount

this claimant hereby claims a lien upon the building and premises herein described.

That at the instance and request of the said Scandinavian-American Building Company through its president, Charles Drury, and its secretary, J. Sheldon, the said claimant, E. E. Davis & Company on the 4th day of January, 1921, commenced to perform labor in alteration and correction of the steel work on the construction of the said building situated on lots in Tacoma in Pierce County, Washington, that is to say, upon the whole of Lots 10, 11 and 12 in Block 1003, as the same are shown and designated upon a certain plat entitled Map of New Tacoma, W. T., which plat was filed of record February 3d, 1875, and is now of record in the office of the Auditor of Pierce County, Washington, of all of which property the said Scandinavian-American Building Company was throughout the year 1920 and still is the owner or reputed owner; That the performance of the labor by the said E. E. Davis & Company on the said building and premises under the employment last aforesaid so continued until the cessation thereof which occurred on the 15th day of January, 1921. That the labor performed by the said E. E. Davis & Company under the employment last above-mentioned, upon the building and premises hereinbefore described was and is of the reasonable value of \$722.03, no part of which has been paid and for which amount this claimant hereby claims a lien on the building and premises herein described.

That the aggregate sum due and unpaid to the said E. E. Davis & Company for labor performed by it on the building situate upon the premises herein described and owned by the said Scandinavian-American Building Company is the sum of \$30,343.69, for which sum together with interest thereon at the rate of six per cent per annum from the 15th day of January, 1921, until paid, the said E. E. Davis & Company claims a lien upon the property herein described and the whole thereof.

This notice of lien claim is rendered necessary and is hereby made and filed because of the errors and omissions in the notice of lien claim by this claimant filed on the 22d day of January, 1921, and recorded at page 634 in record 15 of the lien records of and for Pierce County, Washington.

E. E. DAVIS & COMPANY.

(Corporate Seal) Attest: E. E. DAVIS,

Secretary.

By E. B. DAVIS,

President,

Claimant. [291]

State of Washington,
County of King,—ss.

E. B. Davis, being duly sworn, says: I am the President of the above-named claimant, E. E. Davis & Company, a corporation; I have heard the foregoing claim read and know the contents thereof and believe the same to be just.

[Seal]

(Signed) E. B. DAVIS,

Subscribed and sworn to before me this 7th day of April, 1921.

JAMES W. REYNOLDS,
Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

James W. Reynolds, being duly sworn, says: I am the attorney of and for the claimant, E. E. Davis & Company, a corporation above named; I have heard the foregoing claim read, know the contents thereof and believe the same to be just.

[Seal] (Signed) JAMES W. REYNOLDS.

Subscribed and sworn to before me this 7th day of April, 1921.

DWIGHT D. HARTMAN,
Notary Public in and for the State of Washington,
Residing at Seattle.

No. 593132. Filed by E. E. Davis & Co. Apr. 8, 1921, Lien Record 16, page 64, at 3:52 P. M. C. A. Campbell, County Auditor, Pierce County, Wash. By A. L. Kelly, Deputy. Mail to 303 Burke Bldg., Seattle, Wn. 2:10.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. May 20, 1921. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [292]

Answer of Far West Clay Company to Cross-Complaint of John P. Duke and Scandinavian-American Bank of Tacoma.

Comes now the Far West Clay Company, a corporation, one of the defendants in the above-entitled action, and answering the cross-complaint of John P. Duke, Supervisor of Banks in the State of Washington, in charge of the liquidation of the Scandinavian-American Bank of Tacoma, and the Scandinavian-American Bank of Tacoma,—

I.

Defendant has no knowledge whether the Penn Mutual Life Insurance Company endorsed the note, or sold, or assigned, or transferred the mortgage, as set forth in paragraph 18 of said cross-complaint, to John P. Duke, Supervisor of Banking in the State of Washington; and it has no knowledge whether he is now the owner and holder thereof. It denies that its lien is inferior, subject to or subordinate to the lien of said note and mortgage and that the sum of seven thousand dollars (\$7000.00), or any greater sum than two thousand dollars (\$2000.00), is a reasonable attorney's fee for foreclosing said mortgage.

And this defendant further alleges that the said cross-complainants have no right to foreclose the mortgage set forth and referred to in said first cross-complaint in this action, for the reason that the mortgage only relates to and embraces a part of the real estate involved in the amended and supplementary complaint herein, and involved in this

action, and that there is a misjoinder of causes of action in said cross-complaint, and for the further reason that neither J. E. Chilberg nor Annie M. Chilberg, the makers of the note referred to in the said cross-complaint, and the makers of the mortgage therein referred to, are parties to this action, and without them, as this defendant is informed and believes the said cross-complaints have no right to foreclose this note and mortgage in this action, and this Court is without jurisdiction to entertain this action; and for the further reason that there is a defect of parties defendant herein, because the said Chilbergs should be made parties to an action foreclosing the said mortgage.

III.

And this defendant further alleges that prior to the execution of the mortgage therein referred to, the said lots 11 and 12, in block 1003, were owned by the Scandinavian-American Bank of Tacoma, subject to certain mortgages thereon, which the said Scandinavian-American Bank of Tacoma had assumed and agreed to pay, which mortgages secured its own debts and obligations; that thereafter said real estate was conveyed by the said Scandinavian-American Bank of Tacoma to the said J. E. Chilberg, without any consideration whatever, merely for the purpose of having the said J. E. Chilberg and Annie M. Chilberg, his wife, who were interested in the said Bank, execute the mortgage referred to in said cross-complaint, instead of the said Bank itself doing so; which mortgage was given for money used to pay the mortgage or mort-

gages already on said lots, and that upon the execution of the said mortgage, the said Chilberg and wife, reconveyed the said lots to the said Bank by warranty deed; that while the said note and mortgage were executed by the said Chilbergs, yet, as a [293] matter of fact, it was well understood between all the parties, that the said note was the debt and obligation of the said Bank, and not that of the said Chilberg and wife, who had no interest in the said property, and who were mere dummies for the said Bank.

IV.

Defendant further alleges that when the said Chilberg and wife conveyed the said lots to the said Bank, and it became the owner thereof, the said note and mortgage, referred to in the said cross-complaint, were its own debt and obligation, and that when the said lots were sold to the Scandinavian-American Building Company by the said Bank, the said note and mortgage referred to in the said cross-complaint, remained and continued to be the debt and obligation of the said Bank, and were such at the time it suspended business, and at the time John P. Duke, Supervisor of Banking in the State of Washington, took charge of the said Bank, and they were such at the time of the alleged purchase thereof by the said John P. Duke, and the assignment thereof to him, as set forth in the said cross-complaint.

[Inserted at the end of Paragraph IV as part thereof, under order of court made on Oct. 19 1921, in *purance* of stipulation of counsel.—E. E. C.]

That the said lots were sold and conveyed to the said Building Company by the said Bank by a deed with covenants of general warranty and that the said Bank, then and there, in consideration of the promise of said Building Company to pay for said lots, expressly assumed said mortgage debt and promised the said Building Company to pay the same.

V.

Defendant further alleges that during the year 1920, the Scandinavian-American Bank of Tacoma formed the plan of erecting a building on lots 11 and 12 in block 1003, referred to in the first cross-complaint, and also on lot 10 adjoining the same; but the building planned by it was so costly and expensive that the said Bank could not erect the same without investing in it a sum in excess of thirty per cent of its capital, surplus and undivided profits, which would be in violation of the statutes of the State of Washington, unless the consent of the Bank Examiner thereto was obtained; that the consent of the Bank Examiner thereto could not be obtained.

VI.

That thereupon the said Bank determined to do indirectly what it was prohibited by the said statutes from doing directly, and formed the scheme to erect the said building through the agency of a corporation formed and owned by it and its officers; that in pursuance of the said scheme the Scandinavian-American Building Company, referred to in said cross-complaint, was formed and incorporated,

at the instigation and request of the said Bank and in its sole interest, by certain of its officers and stockholders, who had no substantial financial interest therein, but who merely organized the said Company and subscribed to the capital stock thereof as agents and dummies of the said Bank, which, after the said organization, took, received and held the capital stock therein as its own.

VII.

That in pursuance of the said scheme the said Bank paid for lot 10, adjoining the said lots 11 and 12, in block 1003, and thereupon caused it to be conveyed to the said Building Company, and thereafter, through the agency of the said Building Company, it began the construction of the building on said lots, referred to in said cross-complaint, and advanced a large sum of money to the said Building Company, which was expended in the construction thereof. [294]

[Inserted at end of paragraph VII as part thereof under order of court made Oct. 19, 1921, in *pursance* of stipulation of counsel.—E. E. C.]

And said Bank took part in the construction of said building and induced, encouraged and persuaded the defendant and others to furnish materials and labor for the construction thereof.

VIII.

That the said Bank used a large part of its funds in carrying out the said scheme and in partially erecting the said building, and thereupon it became impracticable to obtain sufficient money to erect the said building, and pay for the labor and materials

used in the construction thereof, and the entire scheme thereupon collapsed, both the said Bank and the said Building Company became and were found to be insolvent, and a receiver was appointed in this case for the said Building Company, and cross-complainant, John P. Duke, Supervisor of Banking in the State of Washington, took charge of the said Bank, as an insolvent Bank, and is now closing up its business and affairs, in accordance with the laws of the State of Washington.

IX.

Defendant alleges that the said Building Company was merely the agent and creature of the said Bank, and that the erection of the said building was the act of the said Bank, operating through its agency, in the sole interest of the said Bank; that while title to said lots was nominally vested in said Building Company, yet in reality they remained the property of the said Bank, and were so at the time of the purchase of the mortgage referred to in said cross-complaint, by the said John P. Duke, Supervisor of Banking in the State of Washington, as aforesaid.

X.

Defendant further alleges that at the request of the Scandinavian-American Building Company, and while it was the holder of the legal title to said lots, it furnished to said Building Company builders' materials for use in the construction of the said building, hereinbefore referred to, and that within ninety days from the furnishing thereof, it filed a notice in writing in the office of the auditor

of Pierce County, Washington, duly verified as required by law, claiming a lien on the said building and on the said lots, for the amount due on the said builders' materials, and that it thereby acquired a valid lien on the said building and on the said lots, for the price and value of the said builders' materials, to wit, the sum of \$22,165.34; that in its counterclaim in this action, served on cross-complainants, it seeks a foreclosure of the said lien against all the parties to this action.

XI.

Defendant alleges that when the said John P. Duke, Supervisor of Banking in the State of Washington, paid to the Penn Mutual Life Insurance Company, the amount of the said note, the said payment operated as a payment and as a discharge thereof, and that on account of the facts hereinbefore set forth, it would be inequitable and unjust to permit the said John P. Duke, as such Supervisor of Banking in the State of Washington, to hold the said note, which in fact was and represented a debt of the said Bank, and to enforce it against the lien of this defendant, and the said John P. Duke is estopped from so doing. [295]

XII.

That when the said John P. Duke, as Supervisor of Banking in the State of Washington, bought the said note and mortgage and took an assignment thereof, he had full notice and knowledge of all the facts hereinbefore set forth.

XIII.

And defendant further alleges that the said John P. Duke, as Supervisor of Banking in the State

of Washington, had no right, power or authority to purchase the said note and mortgage, referred to in the said cross-complaint, from the Penn Mutual Life Insurance Company, or to take an assignment thereof.

XIV.

Answering the second cross-complaint, set forth in the said answer and cross-complaint, defendant has no knowledge whether the corporation "Drury the Tailor, Inc.," deeded the lot referred to in paragraph I of the said second cross-complaint, to the Scandinavian-American Bank of Tacoma for \$65,000 or any other sum, and it has no knowledge whether the said Scandinavian-American Building Company agreed to deliver to the said Bank, bonds of the value of \$350,000 or any other value or sum, as set forth in said paragraph I; and it has no knowledge whether the said Building Company agreed to deliver to the said Bank the said bonds within a period of four months; and it has no knowledge whatever as to the agreement between the said Building Company and the said Bank, referred to and set forth in said paragraph I of the second cross-complaint; and it has no knowledge as to its terms as therein set forth.

XV.

Defendant has no knowledge whether the agreement referred to in paragraph III of said second cross-complaint was not put on record in reliance upon the agreement of the contractors therein referred to, whether the right to file a lien was waived, and defendant denies that the Scandina-

vian-American Bank of Tacoma is entitled to a lien on the premises therein referred to, as set forth in paragraph IV of said second cross-complaint; and it denies it made any agreement waiving its rights to file a lien as set forth in said paragraph III.

XVI.

Defendant denies that its lien upon the premises referred to in the said second cross-complaint, is inferior, or subject to, or subsequent to the lien of the cross-complainants therein.

XVII.

Defendant admits that the title to lot 10 in block 1003, referring to paragraph II of the said second cross-complaint, was in "Drury, the Tailor, Inc.," and that "Drury, the Tailor, Inc.," deeded the said lot to the Scandinavian-American Building Company, and that the title to lots 11 and 12 in block 1003 was in the Scandinavian-American Bank of Tacoma, and that the said Bank deeded the said lots to the said Building Company, as set forth in said paragraph II of said second cross-complaint; but defendant has no knowledge whether the said lots were deeded to the said Building Company in consideration of the agreement of the said Building Company to deliver the bonds therein referred to, to the said Bank; and it has no knowledge whether it was a [296] part of the agreement between the said Bank and the said Building Company that the said bonds should be delivered to the said Bank and it has no knowledge whether a first mortgage in the sum of \$600,000 was to be

executed by the said Building Company, for all of the said lots, in accordance with the terms of the said agreement; and it has no knowledge whether a mortgage in the sum of \$750,000 was to be executed and delivered as a second mortgage on the said premises; defendant further alleges that it has no knowledge whether the agreement, referred to in said paragraph as Exhibit "AX," was actually made between the said Bank and the said Building Company.

XVIII.

Answering the said second cross-complaint, defendant further alleges that on or about the 5th day of August, 1920, under a contract between it and the said Scandinavian-American Building Company, it began to furnish building tiling, and builders' materials of various kinds, consisting of partition tiling, beam covers, key blocks, skews and other tiling, for use in the construction of a certain bank and office building, which the said Building Company was erecting on lots 10, 11 and 12, in block 1003 in Pierce County, Washington, and in that part of the City of Tacoma, known and described as New Tacoma, as shown on the map and plat of New Tacoma, on file in the office of the auditor of Pierce County, Washington, and that the said builders' material were used in the construction of the said building, which was on the said lots.

XIX.

That this defendant thereafter continued to furnish the said builders' materials, until on January

13th, 1921, it ceased to furnish the same, and that the said builders' materials were furnished and delivered to the said Building Company, at the said building, at its request, and that the price thereof as agreed upon between this defendant and the said Building Company was \$29,048.58, which sum was the fair and reasonable value thereof, and that no part thereof was paid, except the sum of \$6,883.24.

XX.

That the said builders' materials were sold under a contract, providing for the payment thereof thirty days after the delivery thereof, but that although payment thereof was due more than thirty days after the delivery of said builders' materials, no part thereof has been paid, except as above set forth.

XXI.

Defendant further alleges that afterwards, and on the 19th day of January, 1921, it filed a notice of claim of lien in the office of the auditor of Pierce County, Washington, in writing, claiming a lien on the said building, hereinbefore referred to, erected on the lots aforesaid, and on the said lots as the lots on which the said building was being erected, for the amount due for the said builders' materials, a copy of which lien is hereto attached, as Exhibit "A" thereto; that the said notice of claim of lien was duly and regularly acknowledged and was filed in the office of the auditor of Pierce County, Washington, and was duly recorded on

the 24th day of January, 1921, in Lien Record No. 15, page 636. [297]

XXII.

Defendant alleges that by virtue of the furnishing of the builders' materials, hereinbefore referred to, and by the filing of the said notice of claim of lien, hereinbefore set forth, it acquired and has a lien on the said building, hereinbefore referred to, erected on said lots 10, 11, 12 in Block 1003, and on the said lots, for the amount due for the said builders' materials, and interest thereon, and defendant further alleges, that in this action it has filed a cross-complaint against the complainant therein, and all of the defendants therein, setting up its lien, and asking for a foreclosure thereof, in accordance with the practice of this Court in such cases, and alleging that its lien is prior to the lien or claim of the cross-complainants, John P. Duke and the Scandinavian-American Bank of Tacoma, as set forth in their second cross-complaint.

XXIII.

Defendant further alleges in this connection, that at the time it furnished the builders' materials, hereinbefore referred to, it had no notice or knowledge whatever of the agreement, set forth in the second cross-complaint aforesaid, and that it had no notice or knowledge that the Scandinavian-American Building Company had agreed to pay the Scandinavian-American Bank of Tacoma any sum whatever for the lots hereinbefore referred to, and it alleges that it had no notice or knowledge that the said Building Company had agreed to pay

the said Bank for the said lots, by the delivery to it of bonds, or any other property or money, or that it had agreed to give a mortgage on the said lots for the sum of \$600,000, or any other sum, as set forth in the said second cross-complaint, and it alleges that its said lien is therefore prior to the rights of the said Bank and of the said John P. Duke, as Supervisor of Banking liquidating said Bank, under and by virtue of said contract and arising from said sale.

XXIV.

Answering the third cross-complaint set forth in the said answer and cross-complaint, defendant alleges that it has no knowledge whether the Scandinavian-American Building Company obtained from the Metropolitan Life Insurance Company an agreement to lend \$600,000.00 on the building as set forth in paragraph II thereof, and it alleges that it has no knowledge whether G. Wallace Simpson represented that he could or would pledge the mortgage therein referred to to obtain money, and it has no knowledge whether the sums thereby obtained were to be repaid to the lenders thereof out of the money obtained from the Metropolitan Life Insurance Company as set forth in the said second paragraph.

XXV.

Defendant denies that the Scandinavian-American Building Company executed and delivered to G. Wallace Simpson the promissory note referred to in paragraph III of said third cross-complaint in accordance with the agreement therein referred

to, and it also denies that it executed the said promissory note in the due exercise of the powers and authorities in that behalf by it possessed, and it denies that due corporate action was first had for the purpose of making, executing or delivering the said note as set forth in paragraph III of said third cross-complaint. [298]

XXVI.

Defendant denies that the Scandinavian-American Bank of Tacoma made, executed or delivered to the said G. Wallace Simpson the mortgage referred to in paragraph IV of said third cross-complaint in the due exercise of the powers and authorities by it in that behalf possessed, and it denies that it was executed after corporate action had first been had in respect thereto.

XXVII.

Defendant alleges that it has no knowledge whether the Scandinavian-American Bank of Tacoma began the erection of the sixteen story building referred to in paragraph VII of said third cross-complaint, pursuant to the contracts therein referred to, but it denies affirmatively as alleged in paragraph VII that all of the contracts therein referred to provided that the laborers and materialmen should have no lien against the real property described in the contracts referred to as Exhibit "X." On the contrary, this defendant alleges that it made no contract whatever with the Scandinavian-American Building Company or anyone else by which it waived its lien for the builders' materials hereinafter referred to, or agreed that it should

have no lien against the real property referred to in said paragraph.

XXVIII.

Defendant denies that the sum of \$40,000.00 is a reasonable attorneys' fee in the matter of foreclosing the mortgage set forth in said third cross-complaint. On the contrary it alleges that a reasonable sum for so doing is the sum of \$2500.00, and no more.

XXIX.

Defendant denies that its interest, claim and lien on the premises referred to in said third cross-complaint, which is hereinafter more specifically set forth, is inferior or subsequent to the alleged lien of the cross-complainants set forth in the said cross-complaint.

XXX.

Defendant has no knowledge whether the Scandinavian-American Bank of Tacoma advanced to the Scandinavian-American Building Company the sum of \$432,822.99, or any other sum, between the 25th day of June, 1920, and the 15th day of January, 1921, or at any other time, as set forth in paragraph VIII of said third cross-complaint, but it denies affirmatively that in making the alleged advances, referred to in said paragraph, the said bank fulfilled the agreement of the said G. Wallace Simpson therein referred to, to the extent of the said \$432,822.99 or any other sums.

XXXI.

Further answering said third cross-complaint, defendant alleges that the note and mortgage for

\$600,000.00 referred to therein, were executed and delivered by the president and secretary of the said Scandinavian-American Building Company without any power or authority so to do from the trustees or stockholders of said company and that the execution of the said note and mortgage was not made or performed in pursuance of any power or authority conferred on the said officers by the vote of a majority or [299] a quorum of the trustees of the said company at any meeting of the said trustees lawfully assembled or otherwise, and the same was therefore invalid and void as was well known to the said Scandinavian-American Bank of Tacoma at the time it took the alleged assignment of the said note and mortgage from the said G. Wallace Simpson.

XXXII.

Defendant further alleges that the alleged note for \$600,000.00 and mortgage securing the same, referred to in said third cross-complaint, were delivered to the said G. Wallace Simpson as agent for the Scandinavian-American Building Company, for the express purpose of enabling him to sell and dispose of the same and to secure the money therefor and that he had no power or authority to dispose of, sell, assign, transfer or pledge the said note or mortgage, except to sell the same to obtain the money therefor. That the said Scandinavian-American Bank of Tacoma well knew the said purpose for which the said note for \$600,000.00 and the mortgage securing the same, were executed and delivered to the said G. Wallace Simpson, and

it well knew that he had no power or authority to sell, assign or transfer the same except for money received, and this defendant alleges that when the Scandinavian-American Bank of Tacoma took this assignment of said note and mortgage from the said G. Wallace Simpson, no money or consideration was paid to the said G. Wallace Simpson or anyone else therefor.

XXXIII.

Defendant further alleges that the said promissory note to the said G. Wallace Simpson, and the mortgage securing the same, were executed and delivered to him without any consideration therefor and that during the time the said note and mortgage were held by the said G. Wallace Simpson, neither their money nor labor, or anything else of value, were paid to or received by the Scandinavian-American Building Company therefor, and it was beyond the power of the said Scandinavian-American Building Company, its trustees, officers or agents, to execute, deliver or assign the said note and mortgage, without any consideration, and the same together with the assignment thereof are void.